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FIRM

COMPANIES INCORPORATED BY SPECIAL ACT,

REGISTERED COMPANIES,

COMPANIES FORMED BY LETTERS PATENT,

COST BOOK MINING COMPANIES,

FOREIGN COMPANIES,

BUILDING, FRIENDLY, INDUSTRIAL AND PROVIDENT,

LITERARY AND SCIENTIFIC AND LOAN SOCIETIES,

CLUBS AND CHARITABLE INSTITUTIONS.

BY

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TO

W. F. A. ARCHIBALD, Esq., M.A.,

A Master of the Supreme Court,

THIS LITTLE BOOK IS

Dedicated

AS

A MARK OF THE AUTHOR'S

ESTEEM.

PREFACE.

AN attempt has been made in this little Work to state the procedure which obtains in and is peculiar to actions in which associations of individuals in the various forms of Firms, Corporations, Companies and Societies are parties.

The Code of Rules which is contained in Order XLVIIIA. of the Rules of the Supreme Court, and the numerous decisions thereon, render it possible to give a connected account of procedure in relation to firms from issue of writ to proceedings after judgment; and therefore Part I. of this work, which deals with such procedure, has been framed in the form of Articles embodying the particular Rules and decisions. Single individuals trading under a firm-name do not come within the definition of firm; but the procedure relating to them has

been included in Part I., since the rules relating to firms proper apply to a great extent to such cases.

There is, unfortunately, no Code, similar to that above mentioned, which relates either to companies or societies generally, or even to particular kinds of such associations. The numerous Statutes having reference to the particular kinds of such associations, contain but few sections dealing with procedure, and the sections which are to be found by no means relate to the same matters. It has, therefore, been impossible to present Part II. of this Work in so connected a form as Part I.; but it is hoped that the collection and arrangement of those sections, and the Rules and Decisions relating to the various associations dealt with will materially lighten the labour of reference to the large number of Statutes and the text-books which bear on them.

It has also been impossible to include in so small a compass every kind of association, and

therefore those have been selected which either are most frequently met with in practice or are representative of a class.

The dates of the decisions have been given in nearly all cases, and reference made to the Law Journal and Law Times Reports in addition to the Law Reports. It has been attempted to make the Index complete.

The Author is indebted to that well-known authority on Procedure, Mr. FRANCIS A. STRINGER, for much kind help and encouragement, and has had the advantage of being able to discuss with him various points of practice which have arisen during the progress of the Work.

COMMON ROOM,
MIDDLE TEMPLE,
27 January, 1902.

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LIST OF REPORTS REFERRED TO.

A. C.	.....	Law Reports, Appeal Cases, since 1891.
App. Cas.	.....	,, House of Lords Cases, 1876—1890.
B. & C.	.....	Barnewall & Cresswell, King's Bench, 1822—1830.
Beav.	.....	Beavan's Reports, Chancery, 1838—1866.
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C. & M.	.....	Crompton & Meeson, Exchequer, 1832—1834.
Ch.	.....	Law Reports, Chancery, 1866—1875, and from 1891 onwards.
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C. P. D.	.....	,, Common Pleas Cases, 1875—1880.
Car. & P.	.....	Carrington & Payne, Nisi Prius, 1823—1841.
D. & L.	.....	Dowling & Lowndes, Practice Cases, 1843—1849.
De G. J. & S.	.....	De Gex, Jones & Smith, Chancery, 1863—1865.
El. & B.	.....	Ellis & Blackburn, Queen's Bench, 1852—1858.
Ex.	.....	Law Reports, Exchequer Cases, 1847—1856.
H. & C.	.....	Hurlstone & Coltman, Exchequer, 1862—1866.
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H. L. Cas.	.....	House of Lords Cases, 1847—1866.
J. P.	.....	Justice of the Peace, from 1837.
L. J. Ch.	.....	Law Journal, Chancery
L. J. C. P.	.....	,, Common Pleas
L. J. Ex.	.....	,, Exchequer
L. J. Q. B.	.....	,, Queen's Bench
L. J. P.	.....	,, Probate
L J. P. C.	.....	,, Privy Council

} From 1831.

L. R. C. P.	Law Reports,	Common Pleas	1866—1875.
L. R. Eq.	,,	Equity	
L. R. Ex.	,,	Exchequer	
L. R. Q. B.	,,	Queen's Bench	

L. T. ..... Law Times (all Courts).
M. & W. ..... Meeson & Welsby's Reports, Exchequer, 1836—1847.
P. ..... Law Reports, Probate, since 1891.
P. D. ..... ,, Probate Cases, 1876—1890.
Q. B. ..... ,, Queen's Bench, since 1891.
Q. B. D. ..... ,, ,, 1876—1890.
R. & M. ..... Ryan & Moody, Nisi Prius, 1823—1826.
Sol. Jo. ..... Solicitors' Journal.
Times Rep. ..... Times Law Reports (all Courts).
Ves. Jun. ..... Vesey Junior's Reports, Chancery, 1810—1817.
W. N. ..... Weekly Notes (all Courts).
W. R. ..... Weekly Reporter (all Courts).

LIST OF AUTHORS REFERRED TO.

The Annual Practice. (1902.)

Law and Practice under the Companies Acts, by Mr. Justice Buckley, 7th edition. (1897.)

Trade Union Law and Cases, by H. Cohen and G. Howell. (1901.)

Conflict of Laws, by A. V. Dicey, K.C., B.C.L. (1896.)

Cases affecting Friendly Societies, by J. Diprose and J. Gammon. (1897.)

Treatise of the Law of Partnerships, by Lord Justice Lindley, 6th edition. (1893.)

Treatise on the Law and Practice of Joint Stock and other Companies, by Lord Justice Lindley, 5th edition. (1890.)

Digest of the Law of Partnership, by Sir Frederick Pollock, 7th edition. (1900.)

Essays in Jurisprudence and Ethics, by Sir Frederick Pollock.

Law and Practice in Relation to Companies, by W. D. Rawlins, K.C., and Hon. M. M. Macnaghten. (1901.)

Treatise on Private International Law, by John Westlake, K.C., 3rd edition. (1894.)

Law and Practice in Bankruptcy, by Lord Justice Vaughan Williams, 7th edition. (1898.)

Procedure

Of the Supreme Court in relation to Firms, Companies and other Associations.

Part I.

PROCEDURE IN RELATION TO FIRMS.

CHAPTER I.

DEFINITIONS AND PRELIMINARY MATTERS.

Art. 1.—Definition of Firm.

(1) A firm is the collective name given to persons who have entered into partnership with one another (*a*).

(2) Partnership (*b*) is the relation which subsists between persons carrying on a business in common with a view of profit.

(3) But (*c*) the relation between members of any company or association which is—

(a) Registered as a company under the Companies Act, 1862 (*d*), or any other Act of

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(*a*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 4 (1).
(*b*) *Ibid.* s. 1 (1). (*c*) *Ibid.* s. 1 (2). (*d*) 25 & 26 Vict. c. 89.

Parliament for the time being in force and relating to the registration of joint stock companies; or

(b) Formed or incorporated by or in pursuance of any other Act of Parliament, or letters patent, or royal charter; or

(c) A company engaged in working mines within and subject to the jurisdiction of the Stannaries;

is not a partnership within the meaning of the Partnership Act, 1890.

The exclusion of the corporations, incorporated and unincorporated companies, contained in sub-sect. 2 of sect. 1 of the Partnership Act is necessary, because they are nearly always associations of "persons carrying on a business in common with a view of profit."

The chief differences between partnerships and companies are—

(1) the limitation of the liability in general incurred by the subscribers of the capital of the latter as opposed to the absence of limitation in the case of the members of a firm;

(2) the constant alteration in the persons constituting the latter, while a partnership is essentially composed of the persons originally entering into the contract of partnership with one another (*e*);

(3) the equal rights in the conduct of the business (*f*) and the power of binding the other members of the firm which are generally possessed by each

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(*e*) *Smith* v. *Alderson* (1881), 50 L. J. Ch. 39, *per* James, L.J., at p. 49; 15 Ch. D. 273.

(*f*) Pollock, p. 7.

partner of a firm, as opposed to the absence of any control over the ordinary conduct of the business which characterises the great majority of the members of a company;

(4) the need of registration under some general Act of Parliament, or the possession of some special Act or charter constituting a company, while partnerships can be entered into by mere agreement;

(5) the recognition of a company, generally speaking, as a legal entity, which recognition is not yet accorded in England by law to firms, though it is by the universal practice of merchants, and by law in Scotland. Ord. XLVIIIA. of the Rules of the Supreme Court, by allowing actions to be brought by and against partners in the name of their firm, is a step towards such recognition; but it is still true (*g*) to say, generally, that "there is no such thing as a firm known to the law" (*h*).

There are associations other than the above which, though not partnerships, exist for the acquisition of gain by their members within the meaning of the Companies Act, and therefore require registration, such as mutual marine insurance associations (*i*), or mutual benefit (*k*) or loan societies (*l*).

On the other hand, there are many associations of persons which do not exist "for the purpose of the acquisition of gain by their members," such as friendly societies, trade unions, charitable institutions and members' clubs.

The special rules of procedure relating to these different kinds of associations are dealt with in Part II.

(*g*) Pollock, p. 22.

(*h*) *Ex parte Corbett* (1880), 14 Ch. Div., *per* James, L.J., at p. 126; and Pollock, p. 22.

(*i*) *Ex parte Cory, In re Arthur Average Association* (1875), L. R. 10 Ch. 542; 44 L. J. Ch. 569: 32 L. T. 713.

(*k*) *Jennings* v. *Hammond* (1882), 9 Q. B. D. 225; 51 L. J. Q. B. 493.

(*l*) *Shaw* v. *Benson* (1883), 11 Q. B. D. 563; 52 L. J. Q. B. 575—C. A.

A single individual who carries on business under a name or style other than his own name cannot be called a firm, though the expression "sole partner of a firm" is frequently met with in text-books and reports. In the commercial world his business is looked upon as something quite distinct from himself, as in the case of firms proper, and Ord. XLVIIIA. r. 11 allows him to be sued in his business name as though it were a firm-name. It also makes the rules applying to proceedings against firms apply to him as far as the nature of the case will permit.

ART. 2.—Definition of Firm-Name.

A firm-name, for the purpose of this book, is the name under which a business is carried on by two or more persons in partnership, or by a single individual when the name under which he trades is a name or style other than his own name.

It is convenient, and avoids repetition, to extend the term firm-name to cover the style under which a single individual carries on business.

It is hardly necessary to state that, apart from questions of fraud, firms have practically a free hand in the choice of their firm-names. This freedom often causes some doubt as to whether the style under which associations of individuals are trading is that of a firm or a company. Such titles of firms as The London Cab Co-operative Company, The West End Properties Syndicate, The Penny Omnibus Association, which closely resemble the titles of incorporated companies, are quite common.

It may perhaps be conveniently mentioned here that, as a rule, the name of a newspaper is not a firm-name under which the proprietors carry on business, and that they should not be so sued (*m*).

(*m*) *De Bernales* v. *New York Herald*, (1893) 2 Q. B. at p. 99 (*n*).

ART. 3.—Limitation in Number of Partners.

A private partnership cannot be formed of more than ten persons for banking or twenty for any other business (*n*).

The Companies Act, 1862, forbids the carrying on of business for gain by any company, association or partnership consisting of more than twenty persons, and in the case of banking ten persons, unless it is registered as a company under the Act, or formed in pursuance of some other Act of Parliament or by letters patent, or is a cost-book mining company.

A partnership not complying with this condition is now illegal, and the members of such an association would be unable to enforce any claim arising out of the partnership dealings, though they would be individually liable for the debts of the concern to a creditor who had dealt with it without notice of the state of things making its business illegal (*o*). A creditor who has notice cannot recover (*p*).

The section does not apply to partnerships formed before the Act.

ART. 4.—Definition of Foreign Firm.

A foreign firm, for the purpose of this book, is a firm whose principal place of business is outside the jurisdiction, and the members of which are ordinarily domiciled there.

This definition is intended to include what is called a colonial firm, the members of which are British subjects,

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(*n*) 25 & 26 Vict. c. 89, s. 4.
(*o*) Lindley on Partnership, p. 111.
(*p*) *Re S. Wales Atlantic Steamship Co.* (1875), 2 Ch. Div. 763; 46 L. J. Ch. 177; a case in which it was held that a solicitor's bill of costs for services in forming the association did not constitute a sufficient petitioning creditor's debt against such a partnership, as the solicitors must have been aware of its illegality.

but who are ordinarily domiciled out of the jurisdiction, and carry on the principal part of their business there. Definitions of a foreign firm are rarely met with, so that the above has been framed with great diffidence. The only one known to the writer is that given by Lord Esher, M.R., in *Worcester City and County Banking Co.* v. *Firbank, Pauling & Co.* (*q*). He describes a foreign firm as "a firm in a foreign country composed of persons not subjects of the Queen." But whether a firm consists of foreign or British subjects is now only a secondary consideration to the question whether the firm carries on business within the jurisdiction, and whether its members are within the jurisdiction or not. This will appear more fully in subsequent chapters; but it is worth while pointing out that British subjects carrying on business exclusively in, and domiciled in Scotland or a colony, or anywhere else outside the jurisdiction, are treated for almost all the purposes of procedure as a purely foreign firm—*i.e.* a firm consisting entirely of foreign subjects domiciled and carrying on business entirely outside the jurisdiction, while a firm consisting of foreign subjects resident in England and carrying on business there is treated as an English firm.

Difficulty is often experienced in distinguishing between foreign firms and foreign companies. In most foreign countries associations of individuals for the purpose of trade similar to our joint stock companies exist, and require for their formation either registration under some general law or the special permission of the Sovereign or Government. Such a company, duly created by a foreign state, is treated as an incorporated or registered company here for most purposes of procedure. They are generally described in their title as compagnie or société anonyme, actiengesellschaft, naamlooze vennootschapt, aktiebolag, &c., according to the country in which they are formed. The titles of foreign firms, on the other hand, must in several countries contain only the names of individuals. For in-

(*q*) (1894) 1 Q. B. at p. 787; 63 L. J. Q. B. 542; 70 L. T. 443—C. A.

stance, in France the style of a commercial firm must contain no other names than those of actual partners. In Germany it must, upon its first constitution, contain the name of at least one actual partner, and must not contain the names of anyone who is not a partner. Changes in the persons constituting the firm need not, however, as a rule, cause changes in the firm-name (*r*).

A partnership *en commandite*, which exists in almost every European country and in several parts of America, and the essence of which is the conjunction of at least one managing partner who is liable without limit for the partnership debts, like a partner in an English firm, with one or more contributing partners who do not take any active part in the business, and who are only liable to the extent of what they contribute or undertake to contribute to the capital (*s*), is a true partnership and not a company, and would be so treated here.

ART. 5.—Division in which an Action must be brought.

The fact that one or both parties to an action are firms makes no difference as to the Division in which the action may be brought, except in actions for the dissolution of partnerships and the taking of partnership accounts, which must be brought in the Chancery Division (*t*).

(*r*) Pollock, p. 25.

(*s*) Pollock's Essays in Jurisprudence and Ethics, p. 100.

(*t*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34.

CHAPTER II.

FIRMS AS PLAINTIFFS.

ART. **6.—Suing in the Firm-Name.**

(1) Any two or more persons (*a*), whether English or foreign subjects, and whether domiciled or resident in England or not (*b*), claiming as co-partners, *and carrying on business within the jurisdiction*, may sue in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; but

(2) Partners domiciled and resident out of the jurisdiction, *and not carrying on business within it*, must sue in their individual names and not in the firm-name (*c*); and

(3) A single individual (*d*), of whatever nationality and domicil, and whether carrying on business in England (*e*) or not, who carries on business under

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(*a*) R. S. C. Ord. XLVIIIA. r. 1.

(*b*) *Worcester City Banking Co.* v. *Firbank*, (1894) 1 Q. B. 784; 63 L. J. Q. B. 542; 70 L. T. 443—C. A.

(*c*) *Western National Bank* v *Perez*, (1891) 1 Q. B. 304; 60 L. J. Q. B. 272; 64 L. T. 543 (approving *Russell* v. *Cambefort* (1889), 23 Q. B. D. 526).

(*d*) Ord. XLVIIIA. r. 11.

(*e*) *St. Gobain, &c. Co.* v. *Hoyermann's Agency*, (1893) 2 Q. B. 96; 69 L. T. 329; 62 L. J. Q. B. 485; *De Bernales* v. *New York Herald*, (1893) 2 Q. B. at p. 98 (*n*); 62 L. J. Q. B. 385.

a firm-name, must sue in his own name and not in the firm-name.

Ord. XLVIIIA. r. 1, part of which is embodied in the first part of this article, only applies to the case of persons who are carrying on business within the jurisdiction of the High Court. The words are sufficiently wide to include all such persons, whether they be English or foreign subjects, and whether resident or domiciled in England or not (*f*); and although it has been doubted whether the rule does apply to foreigners resident abroad (*g*), rule 8 of this Order shows that Rule 1 applies even to them.

Nearly all the decisions on this rule have their immediate application to firms as defendants, though the principle applies equally well to firms as plaintiffs. The important point as to what constitutes carrying on business within the jurisdiction will therefore be dealt with in the next chapter.

An impression still prevails to a certain extent that the names of the persons constituting a firm suing must be set out on the writ. This is quite unnecessary, and involves, when done, the additional trouble of giving the private addresses of all the partners instead of the business address when the action is brought in the firm-name. It is time enough to give the full names and addresses of the partners when required by the defendant to do so by notice under Art. 9.

(*f*) *Worcester City Banking Co.* v. *Firbank*, (1894) 1 Q. B. 784.

(*g*) *Grant* v. *Anderson & Co.*, Wright, J., (1892) 1 Q. B. 108; 61 L. J. Q. B. 107; 66 L. T. 79.

NOTE.—It is somewhat of an anomaly that a single person trading under a firm-name is compelled to sue in his own name; while a firm consisting of two persons, one of whom is a sleeping partner and quite unknown to dealers with the firm, is allowed to sue in the firm-name. Since instances of single individuals trading under a firm-name are so frequently met with in actions, and they are treated in the commercial world as firms proper, it would perhaps not have been very hard upon defendants to allow such individuals to sue in their firm-name, while, on the other hand, it would be very convenient if the permission were extended to them.

Foreign firms carrying on business in England must be described as of their place of business in England when suing; otherwise they will be made, in the Writ Department of the Central Office, to sue in the names of the individual members of the firm as in (2).

In (2) and (3) the private addresses or address of the persons or person suing must be given.

ART. 7.—Actions between Firm and Member.

In actions between a firm and one or more of its members, and also in actions between firms having one or more members in common, the plaintiffs may sue in the firm-name (*h*).

A partner may sue in the name of himself and his co-partners without their consent; but if he sues against their consent he must indemnify them against the costs (*i*). If a firm has a cause of action, and one member has improperly released it, the other members can nevertheless maintain an action upon it if they join him as defendant. An action will also lie for the recovery of a debt due from one partner to the firm, and an action can be maintained between firms having one or more members in common. The firm or firms can in all these cases sue or be sued in the firm-name provided they carry on business within the jurisdiction (*k*).

ART. 8.—Infant or Married Woman as Partner.

A firm is not prevented from suing in the firm-name by the fact that one of the partners is an infant or married woman.

(*h*) Ord. XLVIIIA. r. 10.
(*i*) *Whitehead* v. *Hughes* (1834), 2 C. & M. 318.
(*k*) Lindley on Partnership, pp. 276, 277.

ART. 9.—Disclosure of Names and Addresses of Partners.

Partners suing in the firm-name must, on pain of having the action stayed, disclose the names and places of residence of all the persons constituting the firm on written demand by, or on behalf of, the defendant addressed to them or their solicitors (*l*); and any party to an action by a firm may apply by summons to a judge for the names and addresses of the persons who were partners at the time of the accruing of the cause of action (*m*).

ART. 10.—Title of Action after Disclosure.

The supplying of the names under the previous article does not affect the title of the action. In subsequent proceedings the plaintiffs are still described by the firm-name (*n*).

It may perhaps be conveniently noticed here briefly (*o*) in what cases an action may be brought by and against the firm in its firm-name where the firm carries on business in England.

A. ACTIONS BY FIRMS.

I. Where no change in the firm has occurred.

(a) *Contracts.*

(1) Contracts under seal.—Where a covenant is entered into with A. B. & Co., it may be sued upon by the persons

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(*l*) Ord. XLVIIIA. r. 2.
(*m*) Ord. XLVIIIA. r. 1.
(*n*) Ord. XLVIIIA. r. 1 (2).
(*o*) See Lindley on Partnership, pp. 272–299.

who constituted the firm when the covenant was made. And even if the contract has been entered into with one partner alone, if it relates to partnership matters, the other partners may join in the action unless the defendant can show that he is prejudiced thereby (*p*).

(2) **Bills of exchange and promissory notes.**—Where the drawers, payees or indorsees are partners, they ought to join in an action on the bill, even if one of them has no interest in it, and whether the bill or note relates to partnership matters or not. If a debtor of a firm makes his promissory note payable to one of the partners only, such partner should sue alone on it. If the bill is drawn in favour of a firm in its commercial name, the persons who composed the firm when the bill was drawn ought to be plaintiffs (*q*).

(3) **Other simple contracts.**—If the contract is entered into with several persons jointly, they should all join in an action upon it. This is constantly applied in partnership cases. And if the contract has been entered into on behalf of the firm by one of its members, the firm may sue on it. But where the contract is entered into with the partner as a principal and not as agent for the firm, he should sue on it alone.

(b) *Torts.*

Where a joint damage accrues to several persons from a tort they should all join in an action upon it (*r*). So a firm can sue in its firm-name for a libel on the firm. And an action for the recovery of goods of the firm or for damages for their loss or injury ought to be brought in the firm-name, or by all its members (*s*).

(*p*) Ord. XVI. r. 11.
(*q*) Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 23 (2).
(*r*) Wms. Saunders, 291 (*m*).
(*s*) Lindley on Partnership, p. 289.

II. Where a change in the composition of the firm has taken place.

All persons who carried on business as co-partners may sue and be sued in the firm-name (if any) in which they carried on business at the time of the accruing of the cause of action, even if there has been a change in the firm since. Apart from this, where a new partner is taken into a firm or an old one retires, and the debts due to the old firm are assigned to the new, the new firm can sue on them in its firm-name.

And if there is any agreement, express or implied, between an incoming partner and another person that the former should sue or be sued in respect of the liability of the old firm, then his entrance into the firm does not prevent action being brought by or against the firm in its firm-name.

B. Actions against the Firm.

A firm may be sued in the firm-name even though there has been a dissolution since the accruing of the cause of action.

In cases of contract, apart from statutory exceptions, all persons who are jointly liable on a contract ought to be sued jointly (*t*) unless some of them are abroad (*u*).

In cases of tort, where the tort is imputable to a firm (*x*), an action in respect of it may be brought against all or any of the partners. If some only are sued, they cannot insist upon the other partners being joined as co-defendants (*y*).

In actions in the Chancery Division by or against partnerships, all the partners should be before the Court unless some are out of the jurisdiction (*z*).

(*t*) *Pilley* v. *Robinson* (1887), 20 Q. B. D. 155.
(*u*) *Wilson, Sons & Co. (Limited)* v. *Balcarres Brook Steam Co. (Limited)*, (1893) 1 Q. B. 422.
(*x*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 10.
(*y*) Lindley on Partnership, p. 293.
(*z*) *Ibid.*

CHAPTER III.

FIRMS AS DEFENDANTS.

ART. **11.—Suing a Firm in the Firm-Name.**

(1) Any two or more persons (*a*), whether British or foreign subjects, and whether domiciled or resident in England or not (*b*), being liable as co-partners, *and carrying on business within the jurisdiction*, may be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action.

(2) A single individual carrying on business within the jurisdiction under a firm-name may be sued in that firm-name (*c*).

EXCEPTION.—A single individual who is domiciled and resident abroad (whether he be a British (*d*) or foreign subject (*e*)), and who

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(*a*) Ord. XLVIIIA. r. 1.

(*b*) *Worcester City Banking Co.* v. *Firbank*, (1894) 1 Q. B. 784; 63 L. J. Q. B. 542; 70 L. T. 443—C. A.

(*c*) Ord. XLVIIIA. r. 11.

(*d*) *McIver* v. *Burns*, (1895) 2 Ch. 630; 64 L. J. Ch. 681; 73 L. T. 39.

(*e*) *St. Gobain, &c. Co.* v. *Hoyermann's Agency*, (1893) 2 Q. B. 96; 62 L. J. Q. B. 485; 69 L. T. 329; and *De Bernales* v. *New York Herald*, reported in note to this case, (1893) 2 Q. B. at p. 98; and 62 L. J. Q. B. 385.

carries on business within the jurisdiction under a firm-name, may not be sued in that name.

(3) Where two or more persons, domiciled and resident abroad (whether they be British or foreign subjects), carry on business as co-partners, but not within the jurisdiction, they may not be sued in the firm-name; but the names of the partners whom it is sought to make liable must be inserted on the writ (*f*).

This differs from the rule relating to firms as plaintiffs in that a single individual trading under a firm-name may be sued in that firm-name if he carry on business within the jurisdiction unless he be resident and domiciled out of the jurisdiction.

The advantages of being able to issue a writ against a firm in the firm-name are obvious. There is no longer any necessity to wait till the often difficult task of obtaining the names and addresses of the persons constituting the firm has been overcome. The plaintiff can issue his writ against Jones & Co. without troubling to find out whether one or more persons trade under that style. Further, an easy way of serving a firm when sued in the firm-name is allowed (*g*). And again, execution can only issue against the partnership goods on a judgment against the firm (*h*), and judgment goes against the firm when it is sued in its

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(*f*) *Western National Bank* v. *Perez*, (1891) 1 Q. B. 304; 60 L. J. Q. B. 272; 64 L. T. 543 (approving *Russell* v. *Cambefort*, 23 Q. B. D. 326); *Heineman* v. *Hale*, (1891) 2 Q. B. 83; 60 L. J. Q. B. 650; 64 L. T. 548; *Indigo Co.* v. *Ogilvy*, (1891) 2 Ch. 31; 64 L. T. 846; *Dobson* v. *Festi*, (1891) 2 Q. B. 92; 60 L. J. Q. B. 481; 64 L. T. 551; *Grant* v. *Anderson & Co.*, (1892) 1 Q B. 108; 61 L. J. Q. B. 107; 66 L. T. 79.

(*g*) See Art. 13.

(*h*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 23.

firm-name. The plaintiff also need not necessarily trouble to find out whether there has been a dissolution of partnership since the accruing of the cause of action, because the right to sue partners in the firm-name is not limited to the partners at the date of the issue of the writ (*i*). But in this case difficulties may arise, for the firm-name when used in any action is merely a convenient method of expressing the names of those who constituted the firm at the time of the accruing of the cause of action. Ord. XLVIIIA. does not incorporate the firm; so that if A. is a creditor of a firm consisting of three members, B., C. and D., and D. retires and his place is taken by E., the name of the firm remaining unchanged, A. cannot maintain an action against B., C. and E. in the firm-name unless they have become or are content to be treated as his debtors. An action against the firm in the firm-name would mean in this case an action against B., C. and D., *i.e.* A.'s real debtors (*k*).

Where the plaintiff knows that there has been a dissolution of partnership since the cause of action accrued, it is possible that but little advantage will be gained by suing the firm in the firm-name, for in this case the writ must be served upon all persons within the jurisdiction whom it is sought to make liable (*l*). If this is not done, it may happen that the person against whom he wishes to enforce his judgment against the firm is not one of those persons mentioned in Ord. XLVIIIA. r. 8, and is, in fact, not liable to execution without further proceedings, if at all.

In an action *Ex parte Blain, In re Sawers* (*m*), it was said by Lord Justice James that where there had been an entire change in the persons constituting a firm between the time the contract was made and the writ issued—where, for

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(*i*) *Davis* v. *Morris* (1883), 10 Q. B. D. 436; and Ord. XLVIIIA. r. 1.

(*k*) Lindley on Partnership, p. 274.

(*l*) Ord. XLVIIIA. r. 2.

(*m*) (1879), 12 Ch. D. at p. 533; 41 L. T. 46—C. A.; and see *Wigram* v. *Cox, Sons, Buckley & Co.*, (1894) 1 Q. B. 792; 63 L. J. Q. B. 751; 70 L. T. 656.

instance, A., B. and C. were the partners at the time of the commencement of the action, and E., F. and G. at the time of making the contract—great difficulty would be incurred in suing in the firm-name, and Lord Justice Brett doubted whether an action could be brought in the firm-name. Such a case as this is now probably covered by the wording of Ord. XLVIIIA. r. 1, and it is perhaps possible that E., F. and G. could be sued in the firm-name, though it might be of little, if any, use to a plaintiff if he did so.

Notwithstanding the clear rule allowing firms to be sued in their firm-name, it is still a common practice to sue the individual partners thus—A. B. and C. D. trading as Robertson & Co. Apart from the possibility of mistake in the persons alleged to constitute the firm of Robertson & Co., this practice, where there has been no dissolution of partnership, is quite unnecessary and often leads to disappointment, because, the firm not being sued in the firm-name, the easy way of serving a firm provided by Ord. XLVIIIA. r. 3 is not available, and execution cannot issue against the partnership goods.

ART. 12.—What constitutes a Carrying on of Business within the Jurisdiction.

(1) A firm carries on business within the jurisdiction when it has a place of business within the jurisdiction which is held in the firm's name, and where business is transacted for the firm by a partner or some one in the employ and pay of the firm (*n*); but

(2) the mere fact of having an agency within the jurisdiction, even though the firm's name appear on the door where the agent transacts his business, is

(*n*) *Baillie* v. *Goodwin* (1886), 33 Ch. D. 604; 55 L. J. Ch. 849; 55 L. T. 56; *Keynsham Blue Lias Lime Co.* v. *Baker* (1863), 2 H. & C. 729.

not sufficient to constitute a carrying on of business within the jurisdiction (*o*); and

(3) a foreign firm which has no place of business in England but has a resident partner in England does not carry on business within the jurisdiction (*p*).

ILLUSTRATION.—In *Grant* v. *Anderson & Co.* the defendants were a firm of manufacturers carrying on business at Glasgow, all the members of which were domiciled and resident in Scotland. They employed an agent, McCullum, in London to procure orders for them on commission. For that purpose he occupied an office in London, the rent of which he paid himself, and at which he kept samples of the defendants' goods. On the doorpost at the outer entrance to the premises there was a brass plate bearing the name of William Anderson & Co., Glasgow, with McCullum's name underneath, and the same appeared on a board on the stairs leading to the office; while on the front windows of the office there were the words only, Wm. Anderson & Co., Manufacturers, Glasgow. McCullum's duty was to receive and transmit orders to the defendants at Glasgow, and he had no authority to conclude contracts for the defendants except upon express instructions. On these facts, it was held by the Court of Appeal (affirming the Queen's Bench Division) that the defendants did not carry on business, and had no place of business, within the jurisdiction.

In *Singleton* v. *Roberts* (*q*), a partner of a foreign firm (consisting of British subjects) personally selected goods in this country, which were then purchased by a merchant here in his own name and shipped to the firm. It was held that the firm did not thereby carry on business within the jurisdiction.

(*o*) *Grant* v. *Anderson* (illustration *supra*), (1892) 1 Q. B. 108.

(*p*) *Western National Bank* v. *Perez*, (1891) 1 Q. B. 304; and *Indigo Co.* v. *Ogilvy*, (1891) 2 Ch. 31.

(*q*) (1894), 70 L. T. 687.

CHAPTER IV.

SERVICE ON A FIRM.

ART. 13.—Modes of Service.

Where two or more persons carrying on business in partnership within the jurisdiction are sued in the firm-name under Art. 11, service of the writ may be effected—

(1) by personally serving the writ at any place within the jurisdiction on any partner (*a*);

(2) by personally serving the writ together with a notice as below (*b*) at the principal place, within the jurisdiction, of the business of the firm, upon any person having at the time of service the control or management of the business there;

(3) in exceptional cases of difficulty in effecting service in either of the two ways described above, by substituted service, by leave of a master (*c*);

(4) by service of the writ or notice of the writ outside the jurisdiction on any partner there by leave of a judge under Ord. XI. (*d*);

(*a*) *Lysaght* v. *Clark* (illustration *infra*), (1891) 1 Q. B. 552; 64 L. T. 776.
(*b*) See p. 21.
(*c*) See p. 23.
(*d*) See p. 23.

(5) provided that where there has been a dissolution of partnership to the knowledge of the plaintiff before the commencement of the action, the writ of summons shall be served upon every person within the jurisdiction sought to be made liable (*e*).

ILLUSTRATION.—In *Lysaght* v. *Clark* two persons, foreign subjects, carried on business as co-partners in England. One of them resided in England, the other resided and was domiciled abroad. A writ having been issued against them in the firm-name, the partner resident in England was served with the writ and appeared. It was held that such service was good service on the firm.

Art. 13 applies to all firms carrying on business within the jurisdiction, whether its members be British or foreign subjects, and resident or domiciled within or without the jurisdiction, when they are sued in their firm-name (*f*).

Art. 13 (1). Service on one partner is sufficient service on the firm. The only advantage to be gained by serving more than one partner is derived from the rule that execution on a judgment against the firm cannot issue against the private goods of any partner who has not been served with the writ unless he appears or admits liability on the pleadings, or has been adjudged to be a partner. If the partnership goods are likely to be insufficient to satisfy the debt, and judgment may go in default of appearance, it may be well, therefore, to serve all the partners. This measure, however, if adopted, might extend the time for appearance, because it would only expire at the end of the proper number of days after the day on which the last service was effected. And this applies in whatever ways the services are effected.

(*e*) Ord. XLVIII. r. 3; and *Wigram* v. *Cox, Sons, Buckley & Co.*, (1894) 1 Q. B. 792.

(*f*) *Worcester City Banking Co.* v. *Firbank*, (1894) 1 Q. B. 794.

ILLUSTRATION.—A writ in an action against a firm was duly served upon the firm at its place of business, and five days afterwards was served upon a partner. Judgment in default of appearance was signed against the firm on the first service before eight days had elapsed after the service on the partner. It was held that the partner was entitled to have the judgment set aside (*g*).

No second service should be effected after a judgment has been signed. If the plaintiff wishes to issue execution against the private goods of any partner not served before judgment he must proceed under Ord. XLVIIIA. r. 8 (*h*).

Art. 13 (2). Where this mode of service is used, the writ, and a notice that the writ is served upon him as the person having the management or control of the partnership business, must both be personally served. The notice may be written or printed on the writ, or it may be put on a separate document. It need not be addressed to anyone by name. If no such notice is served with the writ, but the writ only is served, the person served is deemed to be served as a partner. The notice may state that the person served is served both as a partner in the defendant firm and as the person having the control or management of the partnership business; and such a notice is often employed where any difficulty is experienced in finding out whether the person apparently in control of the business is a partner or not. Where this form of notice is employed, and the person served enters an appearance denying partnership, the plaintiff can still rely on the service on him as the manager, and sign judgment in default if a proper appearance be not entered for the firm.

The principal place, within the jurisdiction, of the business of the firm.—There are no reported cases as to what constitutes the *principal* place, within the jurisdiction, of the business of the firm. The only decisions bearing on the point are those referred to as to what constitutes a

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(*g*) *Alden* v. *Beckley* (1891), 60 L. J. Q. B. 87; 25 Q. B. D. 543; 63 L. T. 282.

(*h*) See Art. 24, p. 38.

carrying on of business within the jurisdiction (*i*). Where there is but one place of business within the jurisdiction, no question can, of course, arise; but where a firm carries on business at several places within the jurisdiction, difficulty may well be met with. The principal place of business is really the place where the administrative part of the business is carried on. This need not be the place where the goods, in the case of manufacturers, are made; or, in the case of ordinary shopkeepers, the largest place of business. But, probably, where the plaintiff could prove that the writ had come to the knowledge of the firm, or where the transaction had been entered into with the branch of the business at which the service was effected, without any knowledge that the business carried on there was controlled from some other place of business, an objection by the defendants that the service was not effected at the principal place could not be sustained. In a case where the plaintiff, being ignorant of the dissolution of a partnership, served his writ at the place of business where a former partner purported to carry on the business of the partnership firm, but which was not the place of business of the firm during the subsistence of the firm, it was held that such service was good service on the partnership firm (*k*), even though the other partner was residing abroad.

The person in control or management.—The words are wide enough to cover service on an infant if he actually be at the time of service in control of the business. On the other hand, service on an agent (*l*) of the firm, or on a receiver or manager appointed by the Court (*m*), are not sufficient services on the firm, since the person served must be the servant of the firm.

(*i*) See *supra*, p. 17.

(*k*) *Shepherd* v. *Hirsch* (1880), 45 Ch. D. 231; 59 L. J. Ch. 819; 63 L. T. 335.

(*l*) *Baillie* v. *Goodwin* (1886), 33 Ch. Div. 604.

(*m*) *Re Flowers & Co.* (1896), 65 L. J. Q. B. 679 (decided on a similar rule in Bankruptcy, r. 260 of Rules of 1886).

Art. 13 (3). **Substituted service.**—Efforts to effect service in both the ways described in Art. 14 (a) and (b) must be exhausted before an order for substituted service will be granted; but in a case of real difficulty, such as the place of business being closed and the partners unknown, an order for substituted service may be obtained. But such an order cannot be made for service on a partner, out of the jurisdiction, of a firm carrying on business within the jurisdiction merely because he cannot be served within the jurisdiction. In a case where a single individual traded under a firm-name, and there appeared no one at the place of business who could be described as having the control or management of it, and the place of residence of the defendant could not be ascertained, an order for substituted service on him was made (*n*), and there seems no reason why this should not apply equally well in the case of firms proper.

In *The Croydon and Norwood Tramways Co.* v. *Jackson & Co.* (*o*), it was held by the Court of Appeal that an order for substituted service on a firm by sending the writ through the post was good, but the facts of the case are not reported.

The foregoing remarks only apply in cases where the firm is sued in its firm-name. Where the individual partners are sued, substituted service is granted as in ordinary cases (*p*).

Art. 13 (4). Service out of the jurisdiction can only be effected by order of a judge, and before leave can be granted it must be shown that the case is one which comes within the scope of Ord. XI. Such an order can only be made for service on a partner (*q*).

Art. 13 (5). The service must be effected personally on the late partner before judgment is signed.

(*n*) *Shillito* v. *Child & Co.* (1883), W. N. p. 208.

(*o*) 3 Times Law Rep. 650—C. A.

(*p*) See *Henderson* v. *Campbell* (1865), 34 L. J. Ch. 666; *Leese* v. *Martin* (1872), L. R. 13 Eq. 77; *Snow* v. *Hole* (1841), 10 L. J. Ch. 178.

(*q*) *Wigram* v. *Cox, Sons, Buckley & Co.*, (1894) 1 Q. B. 792; 63 L. J. Q. B. 751; 70 L. T. 656; and *Ex parte Young, In re Young* (1882), 19 Ch. D. 124; 51 L. J. Ch. 141; 45 L. T. 493.

ART. 14.—Service on a single Individual trading under a Firm-Name.

Where a single individual carries on business within the jurisdiction under a firm-name, service may be effected in either of the ways described in Art. 13 (1), (2), (3), (4).

EXCEPTION (i).—A single individual carrying on business within the jurisdiction under a firm-name who, whether he be a British (*r*) or foreign subject (*s*), is domiciled and resident abroad may not be served in the way described under Art. 13 (2). If he come within the jurisdiction he may be served personally with the writ; or if not, an order for service out of the jurisdiction must be obtained under Ord. XI.

EXCEPTION (ii).—Where the person trading under a firm-name is a lunatic, or, probably, an infant, service cannot be effected under Art. 13 at all, but proceedings must be taken under Ord. XIII. r. 1 (*t*).

Where service is effected only in the mode described in Art. 13 (2), execution cannot issue against his property other than that belonging to his business.

(*r*) *MacIver* v. *Burns*, (1895) 2 Ch. 630; 64 L. J. Ch. 681; 73 L. T. 39.

(*s*) *St. Gobain, &c. Co.* v. *Hoyermann's Agency*, (1893) 2 Q. B. 96; where it was held that Ord. XLVIIIA. r. 3 does not extend the substantial jurisdiction of the English Courts against an individual foreigner resident out of the jurisdiction. This is perhaps stated too widely. See Law Quarterly Review, X., p. 197, for opinion that this case is not consistent with *Worcester City, &c. Banking Co.* v. *Firbank*, (1894) 1 Q. B. 784.

(*t*) *Fore Street Warehouse Co.* v. *Durant* (1883), 10 Q. B. D. 471; 52 L. J. Q. B. 287; 48 L. T. 531.

ART. 15.—Service on Foreign Firm.

Where a foreign firm does not carry on business within the jurisdiction, the individual partners whom it is sought to make liable must be sued in their own names (*u*), and service may be effected, without order, on any of them found within the jurisdiction, or, by leave of a judge under Ord. XI., on any of them outside the jurisdiction; but service cannot be effected under Art. 13 (2), nor is service on one of the partners a sufficient service on all.

ILLUSTRATION.—In *Western National Bank* v. *Perez*, a firm not carrying on business within the jurisdiction, and the members of which were domiciled and ordinarily resident out of the jurisdiction, was sued in the firm-name, and service effected on a partner who was temporarily in England. It was held that this was not good service on the firm.

An order for service out of the jurisdiction cannot be made against the firm in the firm-name. In *Dobson* v. *Festi* (*x*) the defendants were a firm which consisted entirely of foreign subjects domiciled and resident abroad and having no place of business in England. They were sued in their firm-name in respect of a breach of contract committed within the jurisdiction. Leave was obtained to issue a writ for service out of the jurisdiction, and notice of the writ was served on one of the partners abroad. No appearance was entered for the defendants. It was held that judgment in default could not be given on such service.

(*u*) *Western National Bank* v. *Perez*, (1891) 1 Q. B. 304.

(*x*) (1891) 2 Q. B. 92; 60 L. J. Q. B. 451; 64 L. T. 551.

ART. **16.—Agreement to accept Service within the Jurisdiction.**

(1) A foreign firm not carrying on business within the jurisdiction can agree to accept service of legal proceedings at some place within the jurisdiction, and service effected in accordance with the agreement is good (*y*).

(2) But an agreement that the Court shall have power to order service out of the jurisdiction on a foreign firm is of no effect, since the jurisdiction of the English Courts cannot be extended by agreement (*z*).

(*y*) *Montgomery* v. *Liebenthal & Co.*, (1898) 1 Q. B. 487; 67 L. J. Q. B. 313; 78 L. T. 211—C. A.

(*z*) *British Wagon Co.* v. *Gray*, (1896) 1 Q. B. 35; 65 L. J. Q. B. 75; 73 L. T. 498—C. A.

CHAPTER V.

APPEARANCE FOR FIRM.

ART. 17.—Form of Appearance.

Where a firm, or a single individual, is sued in its or his firm-name, the persons or person trading under that firm-name must appear in their or his individual names or name, with the description trading, carrying on business or practising as the firm-name, or as a partner or partners in the defendant firm.

An appearance by one partner of a firm describing himself as such is a sufficient appearance by the firm to prevent judgment in default of appearance, or upon which to issue a summons, in a proper case, to sign judgment under Ord. XIV.

It is not necessary that all the partners be represented by the same solicitor.

The only modifications in the form of appearance, "trading, &c.," which are allowed are—

(1) In cases where a mistake has been made on the writ as to the firm-name—*e.g.* where "Charringtons" are sued when the firm-name is really T. B. Charrington & Co. Here the appearance should be worded, "Enter an appearance for A. B. and C. D. trading as T. B. Charrington & Co. sued as Charringtons." The style of the defendants in the title of the action on the appearance form, and on subsequent documents must, however, remain as "Charringtons" unless the writ is amended.

(2) In the more difficult case where there has been a

dissolution of partnership since the accruing of the cause of action, but the writ is still issued against the defendants in the firm-name. In such a case the defendants' solicitor does not, naturally enough, wish to enter an appearance for the persons who did constitute the firm at the time of the accruing of the cause of action with the description "trading, &c.," when the fact is that at the time of the entry of the appearance they do not trade under that style, especially as such an appearance might be treated as an admission of trading at that time. The practice under such circumstances has varied. Formerly an appearance was received for the late members of the firm with the description "lately or formerly trading as ———"; but such an appearance would not be allowed now, as it might tend to embarrass the plaintiff by leaving the way open for persons who were partners before the accruing of the cause of action, and upon whom the plaintiff does not seek to attach any liability, to enter an appearance. For the same reason, appearances for persons simply describing themselves as "sued as ———," "sued but not trading as ———" cannot be entered.

It must be assumed that the plaintiff is suing under the firm-name those persons who were partners at the time of the accruing of the cause of action; and therefore the proper appearance, where there has been a dissolution since that time, is for such persons, or one or more of them, with the description trading as ———, or a partner or partners in the firm of ———, at the time of the accruing of the alleged cause of action.

Where the dissolution has been caused by the death of one of the partners an appearance cannot be entered for his personal representatives unless they have been added as defendants. And this is so in the case of a single person sued in his firm-name. But where a business is being carried on by the executors under the same firm-name, they may, of course, be sued under that name, and appear as "trading, &c."

ART. 18.—Appearance under Protest.

Any person served as a partner under Art. 13 may enter an appearance denying that he is a partner; but such an appearance does not preclude the plaintiff from otherwise serving the firm, and obtaining judgment in default of appearance if no proper appearance for the firm be entered.

The form of such an appearance is, "for A. B. served as a partner in the defendant firm, but who denies that he is a partner"; or, in the case of a single individual trading under a firm-name, "as the person trading as ———, but who denies that he so trades," when the notice served on him is so worded. This appearance should be used:—

(1) Where it is denied that there has ever existed, or that there existed at the time of the accruing of the alleged cause of action, such a firm as is sued, and the person appearing has been served with the writ alone, or with the writ and notice in the form "as a partner and as the person having the control or management of the partnership business."

(2) Where it is not denied that such a firm existed at the time of the accruing of the cause of action, or that it exists at the time of entry of appearance, but simply that the person served as above is, as a matter of fact, not a partner in such firm. Such an appearance is not an appearance for the firm, and in face of it the plaintiff may—

(1) if he has served the person appearing in the dual capacity of partner and manager, sign judgment in default of appearance if it be the only one entered, relying on the service on him as manager;

(2) if such service was not effected, proceed to effect service on the firm in any of the ways open to him, and after the expiration of the proper time sign judgment in default of appearance if it still remain the only appearance entered;

(3) if he wishes to contest the denial at once, issue a

summons to strike out such appearance, or amend it, on the ground that the person appearing is a partner. If he adopts this course the master may, in a clear case, do what he asks, or, if there is a reasonable doubt, may direct an issue to be tried;

(4) sign judgment as in (1) and (2), or, if there be a proper appearance for the firm, proceed to judgment, and then apply to issue execution under Ord. XLVIIIA. r. 8 against the private goods of the person appearing on the ground that he is a partner.

The foregoing remarks with reference to appearances for firms when sued in the firm-name do not apply to cases where the defendants are sued as A. B. or A. B. and C. D. trading as ———. This description does not constitute a suing of the firm in the firm-name, and the only appearance that can be entered is for the individual or individuals named. No denial of trading can be put on the appearance form (though it may possibly be used as matter of defence), nor can an appearance be entered for an unnamed person who, as a matter of fact, is a partner in the firm trading as alleged.

Where the firm is sued in its firm-name, and an individual partner or partners are also sued, the appearance should be for A. B. and C. D. trading as ———, and for the said A. B. or A. B. and C. D. in his or their personal capacity or capacities. No extra fee is charged for an appearance in more than one capacity if entered at the same time and by the same solicitor.

ART. 19.—Appearance for Manager.

No appearance is necessary, or can be received, for the person served as the person in control of the partnership business unless, as a matter of fact, he is a partner in the defendant firm.

ART. 20.—Title of Action subsequent to Appearance.

The entry of an appearance by the persons constituting the firm does not alter the title of the action. It still continues against the firm in the firm-name.

ART. 21.—Power of Managing Partner.

A managing partner has power to employ a solicitor to enter an appearance on behalf of all the members of a firm, and it is a sufficient discharge of his duty for a solicitor to inform that partner alone of the state of the proceedings without informing the other members of the firm (*a*).

(*a*) *Tomlinson* v. *Broadsmith*, (1896) 1 Q. B. 386; 65 L. J. Q. B. 308; 74 L. T. 265—C. A.

CHAPTER VI.

DEFENCE BY FIRM.

ART. **22.—Form of Defence.**

Where the firm is sued in the firm-name, any defence delivered must be a defence for the firm, and not a defence for the individual partners or partner who have or has appeared (*a*). If the partners desire to put in separate defences they may do so, but the defence must be "on behalf of the firm by A. B. a partner" (*b*).

Where several defences are delivered, the plaintiff must, of course, show that none of them are sufficient to prevent judgment against the firm (*c*).

The rule that any defence delivered must be a defence for the firm applies when one of the partners sued in the firm-name dies after issue of writ and appearance. The survivor must not put in a merely personal defence (*d*).

But where a partner is made a co-defendant with his firm he can put in a defence for himself as well as one on behalf of the firm.

One partner may defend an action brought against the firm (*e*). But if he acts against the will of the other partners, he must indemnify them against the consequences

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(*a*) *Ellis* v. *Wadeson*, (1899) 1 Q. B. 714; 68 L. J. Q. B. 604; 80 L. T. 508.
(*b*) *Ibid.*
(*c*) *Ibid.*
(*d*) *Ibid.*
(*e*) *Taylor* v. *Collier* (1882), 30 W. R. 701; 51 L. J. Ch. 853.

of so doing (*f*). It is also competent to any partner to stay proceedings, or to put an end to the action altogether by means of a release, provided there be nothing in the nature of fraud about the transaction (*g*).

Counterclaim.—If a foreign firm sues in England it is liable to have a counterclaim pleaded against it, even though the nature of the claim was such that a writ could not be issued for service out of the jurisdiction (*h*).

In an action by a trustee in bankruptcy of the firm of L. & Co. for the price of goods sold the defendant counterclaimed in respect of articles which, not for the purposes of the firm, were supplied by him to L. whom he believed to be the sole member of the firm. It was held that the counterclaim would not lie against the firm (*i*).

(*f*) Romer, L.J., in *Ellis* v. *Wadeson*, *supra*; and Lindley on Partnership, pp. 280, 281.

(*g*) Lindley on Partnership, pp. 276, 277.

(*h*) *Grundthoven* v. *Hamlyn & Co.*, 8 Times Rep. 231.

(*i*) *Baker* v. *Gent*, 9 Times Rep. 159.

CHAPTER VII.

JUDGMENT AGAINST A FIRM.

ART. 23.—Form of Judgment.

Where a firm or single individual is sued in the firm-name the judgment must be entered against the firm or individual in that name, and not against the individual partners or person in their proper names or name (*a*).

EXCEPTIONS.—(i) Where the firm contains an infant partner judgment must be signed against the firm other than the infant partner by name (*b*).

(ii) If a partner die before an action is brought against the firm, or between service of the writ and judgment, the judgment can only be obtained against the surviving partners unless the legal personal representatives of the deceased partner are added as defendants (*c*).

It follows from the above that if one of the partners fail to appear judgment cannot be signed against him sepa-

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(*a*) The judgment must follow the writ; and see *Munster* v. *Cox* (1885), 10 App. Cas. 680, a case in which the title of the proceedings was wrongly altered during progress of the action.

(*b*) *Lovell* v. *Beauchamp*, (1894) A. C. 607; 63 L. J. Q. B. 802; 71 L. T. 587.

(*c*) *Ellis* v. *Wadeson*, (1899) 1 Q. B. at pp. 718, 719.

rately in default of his appearance (*d*); and if any one partner does appear judgment cannot be signed against the firm in default of appearance (*e*). Though the judgment must be against the firm and not against the individual members, the plaintiff may, after the judgment, bring an action upon it against one or more of them without leave (*f*).

It would seem to follow from Exception (i) that where an infant carries on business alone under a firm-name, judgment cannot be signed against him unless proceedings are taken under Ord. XIII. r. 1. A judgment against a married woman trading alone under a firm-name may be signed against her in that name, but its effect is limited to her separate property (*g*).

Exception (ii) is based upon the remarks of Romer, L.J. in *Ellis* v. *Wadeson* (*h*), which, although not necessary for the decision of the particular point in issue in that action, were intended as a guide for the future (*i*).

If the firm consisted of two partners, and both died after service of the writ, but before judgment, a judgment could not be signed against the firm, and this would also be the case where a single individual is sued in his firm-name. It would, of course, depend upon the nature of the claim as to whether an order to carry on the proceedings against the personal representatives of the deceased partners or person could be obtained (*k*).

When a judgment is signed against a firm which has been dissolved, but not to the plaintiff's knowledge, before the issue of the writ, the judgment is not binding *per se* on

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(*d*) *Jackson* v. *Litchfield* (1882), 8 Q. B. D. 474; 51 L. J. Q. B. 327; 46 L. T. 518—C. A.

(*e*) *Adam* v. *Townend* (1885), 14 Q. B. D. 103; *Alden* v. *Beckley & Co.* (1880), 25 Q. B. D. 543.

(*f*) *Clarke* v. *Cullen* (1878), 9 Q. B. D. 355; 47 L. T. 307.

(*g*) *Re Frances Handford & Co., Ex parte Handford*, (1899) 1 Q. B. 566; 68 L. J. Q. B. 386; 80 L. T. 125—C. A.

(*h*) (1899) 1 Q. B. at pp. 718, 719.

(*i*) *Ibid.* at p. 716.

(*k*) See *Kirk* v. *Todd* (1883), 21 Ch. D. 484; 52 L. J. Ch. 224; 47 L. T. 676—C. A., a case where the action was held to abate through death of a sole partner.

any member of the dissolved firm who has not been served with the writ as a partner before judgment, nor has appeared, nor admitted on the pleadings that he is a partner. Leave should not be given to issue execution against him under Ord. XLVIIIA. r. 8, if he dispute his liability, till after an issue has been tried; nor till then can a debtor's summons be properly issued against him on the judgment (*l*).

Where a suit for specific performance of a contract made with a firm was instituted against its late members after a dissolution of partnership had occurred, it was held that one of them being out of the jurisdiction was not a sufficient reason why a decree should not be made against those who were within (*m*).

If an action is brought for the recovery of a debt due to the firm, one of the partners cannot bind the firm by consenting to a judge's order referring all matters in difference between the plaintiffs and the defendants to arbitration (*n*). And in an action against the firm one partner has no authority to bind the firm by consenting to an order for judgment against it (*o*). The case in which this was established presents some peculiar features. The plaintiff issued a writ against R. & Co. R. only appeared, and plaintiff delivered a statement of claim against R., sued as R. & Co. Issue was joined, the case proceeded to trial, and a verdict was taken for the plaintiff by consent, upon which judgment was signed against R. sued as R. & Co. The plaintiff, having subsequently discovered that C. had been a member of the firm, and the whole of the judgment not having been realized by process against R., applied for an order to amend the judgment by making it a judgment against the firm of R. & Co., in accordance with the writ. It was held that the amendment ought not to be allowed; for the

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(*l*) *Ex parte Young*, *In re Young* (1882), 19 Ch. D. 124; 51 L. J. Ch. 141; 45 L. T. 493.

(*m*) *Southern* v. *Harrison* (1864), 10 L. T. 263; 12 W. R. 794.

(*n*) *Hatton* v. *Royle* (1858), 3 H. & N. 500; 27 L. J. Ex. 486.

(*o*) *Munster* v. *Cox* (1885), 10 App. Cas. 680, affirming *Munster* v. *Railton* (1883), 11 Q. B. D. 435; 52 L. J. Q. B. 409; 48 L. T. 624.

plaintiff, although he acted in ignorance of the fact that there was another partner, must be taken to have elected to sue R. alone, and that he was concluded by the form, though wrong, of the proceedings subsequent to the appearance.

Effect of a judgment against a partner as a bar to subsequent proceedings against the other partners.—The liability of partners for all debts and obligations of the firm incurred while they are partners being joint and not several (*p*), except as to the estate of a deceased partner, and a judgment recovered against some of divers joint contractors being, even without satisfaction, a bar to an action against another of them alone, it follows that a judgment recovered against one partner would, even if unsatisfied, be a bar to an action against the other partners (*q*).

But a judgment recovered against one partner, sued in the firm-name, on bills given in the firm-name for the price of goods sold, is not of itself, without satisfaction, a bar to a subsequent action against another partner for the price of the goods, since the causes of action are distinct (*r*).

An action and judgment against two persons who had borrowed money from the plaintiffs, though the judgment remains unsatisfied, constitutes a bar to another action brought by the same plaintiffs against a third person who is afterwards discovered to have been a partner with the other two persons in the business for the purposes of which the money had been borrowed (*s*).

(*p*) *Kendall* v. *Hamilton* (1879), 4 App. Cas. 504.

(*q*) *Carne* v. *Leigh* (1824), 9 D. & R. 126; 6 B. & C. 124.

(*r*) *Wegg-Prosser* v. *Evans*, (1895) 1 Q. B. 108; 64 L. J. Q. B. 1, overruling *Cambefort & Co.* v. *Chapman* (1882), 9 Q. B. D. 229.

(*s*) *King* v. *Hoare*, 13 M. & W. 494 (adopted in *Kendall* v. *Hamilton*, *supra*).

CHAPTER VIII.

EXECUTION ON A JUDGMENT AGAINST A FIRM.

ART. 24.—Against what Execution may Issue.

Where a judgment or order is against a firm, execution may issue (*a*)—

(1) against any property of the partnership within the jurisdiction;

(2) against the private property of any person who has appeared as a partner, or who has admitted on the pleadings that he is a partner, or who has been adjudged to be a partner;

(3) against the private property of any person who has been served with the writ as a partner, before judgment, and has failed to appear;

(4) by leave of the Court or a judge, against the private property of any other person whom the plaintiff alleges to be a partner in the defendant firm.

EXCEPTION. In actions between a firm and one of its members, and in actions between firms having one or more members in common, no execution can be issued without leave of the Court or a judge (*b*).

"Firm" here means the partners when the cause of action accrued.

(*a*) Ord. XLVIIIA. r. 8.
(*b*) *Ibid.* r. 10.

Art. 24 (1). No execution can issue against the partnership property except on a judgment against the firm (*c*). But a judgment creditor of any partner in a firm can obtain an order charging that partner's interest and appointing a receiver (*d*).

The fact that the firm contains an infant partner does not prevent execution against the partnership property (*e*).

Where a judgment has been signed against a married woman who trades alone under a firm-name, the execution against her is limited to her separate property (*f*).

The death of a partner in the firm before judgment does not prevent execution against the partnership assets (*g*).

Art. 24 (2). No execution can issue against the private property of an infant partner (*h*).

If a partner die before issue of writ, or between issue of writ and judgment, his private estate cannot be made liable unless his personal representatives be added as defendants (*i*).

Art. 24 (3). This includes a person who has to the plaintiff's knowledge left the firm before the action was brought provided he has been served with the writ before judgment (*k*).

If a member of the firm was out of the jurisdiction when the action was commenced, and he has not appeared, execution cannot issue against his private goods unless he has been made a party to the action under Ord. XI., or has been served within the jurisdiction after the writ in the action was issued. But his being outside the jurisdiction does not prevent execution being issued against

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(*c*) Pr. Act, 1890, s. 23 (1).
(*d*) *Ibid.* s. 23 (2); and see *post*, Chap. IX.
(*e*) *Lovell* v. *Beauchamp*, (1894) A. C. 607.
(*f*) *Re Frances Handford & Co.*, (1899) 1 Q. B. 566.
(*g*) *Ellis* v. *Wadeson*, (1899) 1 Q. B. at p. 718.
(*h*) *Lovell* v. *Beauchamp*, (1894) A. C. 607.
(*i*) *Ellis* v. *Wadeson*, (1899) 1 Q. B. 714; *Phillips* v. *Homfray* or *Fothergill* v. *Phillips* (1883), 24 Ch. D. 439; 52 L. J. Ch. 833; 49 L. T. 5—C. A.; *Re Shepherd* (1890), 43 Ch. D. 136.
(*k*) *Davis* v. *Morris* (1883), 10 Q. B. D. 436; 52 L. J. Q. B. 401.

the partnership property, nor an order being obtained charging his interest in the partnership property (*l*).

Art. 24 (4). Proceedings cannot be taken under this clause against a partner who has, to the plaintiff's knowledge, retired from the firm before issue of the writ. It only applies where there has been no dissolution, or none to the plaintiff's knowledge (*m*).

Leave may be given forthwith if liability is not disputed; or, if it be disputed, an issue may be ordered to be tried to determine it (*n*).

Application is made by summons before a master in chambers. The summons must be served personally on the alleged partner whom it is sought to make liable.

There is no necessity to levy execution against the property of the firm before having recourse to the separate estates of the partners.

Nor is it necessary to proceed under Clause (4) when it is sought to issue execution against some one not mentioned in Clauses (2) and (3). An action founded on the judgment may be brought against him (*o*). But the judgment cannot be made the foundation of a debtor's summons in bankruptcy against him, if he disputes his liability, till that has been established either by an issue under Clause (4) or by separate action against him (*p*).

ART. 25.—Execution against a Single Individual Trading under a Firm-Name.

Where judgment in default of appearance is signed against a single individual in the firm-

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(*l*) Ord. XLVIIIA. r. 8.

(*m*) Cave, L.J., in *Wigram* v. *Cox, Sons, Buckley & Co.*, (1894) 1 Q. B. at p. 798; and see *Ex parte Young, In re Young* (1882), 19 Ch. D. 124; *In re Ide* (1886), 17 Q. B. D. 755.

(*n*) *Worcester Banking Co.* v. *Trotter*, 3 Times Rep. 709.

(*o*) *Clark* v. *Cullen* (1882), 9 Q. B. D. 355.

(*p*) *Ex parte Young, In re Young* (1882), 19 Ch. D. 124.

name under which he trades, execution may issue on the judgment—

(1) against his business property only, when service has been effected in the way described in Art. 13 (2), *i.e.* by serving the person in control of the business;

(2) against both his private and business property where he has been served personally.

If the defendant enters an appearance, and the plaintiff obtains judgment, it can, of course, be enforced by execution against either his property in connection with his business or his private property, or both, in whatever way service was effected.

CHAPTER IX.

CHARGING ORDERS AND ATTACHMENT OF DEBTS.

ART. 26.—Charging Order.

(1) The High Court, or a judge thereof, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been given or directed if the charge had been made in favour of the judgment creditor by the partner (*a*), or which the circumstances of the case may require (*b*).

(2) The other partner or partners are at liberty

(*a*) *Brown, Janson & Co.* v. *Hutchinson & Co.*, (1895) 2 Q. B. 126.

(*b*) Pr. Act, 1890, s. 23 (2).

to redeem the interest charged, or, in case of a sale being directed, to purchase the same (*c*).

A charging order under this section is not a transaction protected by sect. 49 of the Bankruptcy Act, 1883 (*d*).

A partner's interest in the partnership property is his share upon the division of the surplus after payment of the partnership debts.

This article applies to a foreign partnership having a branch house of business in this country with assets which the sheriff could take in execution under the former practice (*e*), *i.e.* before the Partnership Act, 1890. A charging order under this section does not confer on the judgment creditor any greater right than the debtor himself is entitled to for his own benefit (*f*), but it now charges the whole of his interest (*g*).

It may be obtained upon the share of a lunatic partner (*h*).

A judgment creditor who has obtained a charging order will be entitled to an order for the sale of his judgment debtor's interest in the partnership property and profits (*i*), and probably also to an order for foreclosure against him, and such order may be obtained without commencing an independent action (*k*). Partners of a judgment debtor against whom a charging order has been made may *at any time* redeem the interest charged (*l*).

They are entitled to purchase the share sold when a sale is ordered, but they must act with perfect fairness (*m*).

(*c*) Pr. Act, 1890, s. 23 (2).
(*d*) *Wild* v. *Southwood*, (1897) 1 Q. B. 317.
(*e*) *Brown, Janson & Co.* v. *Hutchinson*, (1895) 1 Q. B. 737; 64 L. J. Q. B. 359; 72 L. T. 437.
(*f*) *Howard* v. *Sadler*, (1893) 1 Q. B. 1; 68 L. T. 120; *Cooper* v. *Griffin*, (1892) 1 Q. B. 740; 61 L. J. Q. B. 563; 66 L. T. 660.
(*g*) Lindley on Partnership, p. 364.
(*h*) *In re Leavesley*, (1891) 2 Ch. 1; 60 L. J. Ch. 385; 64 L. T. 269.
(*i*) Pr. Act, 1890, s. 23 (3).
(*k*) Lindley on Partnership, p. 364; Ord. XLVI. rr. 1A, 1B; and cp. *Leggott* v. *Western* (1884), 12 Q. B. D. 287.
(*l*) Pr. Act, 1890, s. 23 (3).
(*m*) Lindley on Partnership, p. 365.

Where judgment has been given in an action in the Chancery Division for the dissolution of a partnership, and a receiver appointed, and afterwards a creditor recovers judgment against the firm in an action in the King's Bench Division, the judgment creditor can obtain, by applying in the Chancery action, a charge for the debt and costs on the partnership money in the hands of or coming to the receiver, on his undertaking to deal with the charge according to the order of the Court (*n*).

ART. 27.—Service of Summons.

Every summons by a separate judgment creditor of a partner for an order charging his interest in the partnership property and profits under Art. 26, and for such other orders as are thereby authorised to be made, must be served on the judgment debtor, and on his partners, or such of them as are within the jurisdiction; and such service is good service on all the partners, and all orders made on such summons must be similarly served (*o*).

ART. 28.—Application by Partners.

Every application which is made by any partner of the judgment debtor under Art. 26 must be made by summons, and such summons must be served on the judgment creditor and on the judgment debtor, and on such of the other

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(*n*) *Kewney* v. *Attrill* (1886), 34 Ch. D. 345; 56 L. J. Ch. 448.
(*o*) Ord. XLVI. r. 1A.

partners as do not concur in the application and as are within the jurisdiction; and such service is good service on all the partners, and all orders made on such summons must be similarly served (*p*).

The application under these articles is made to the judge in chambers by summons.

If it is apprehended that the judgment debtor under Art. 26 will dispose of or deal with his interest in the property, an injunction should be applied for (*ex parte* on affidavit) to restrain him from so doing pending the hearing of the summons (*q*).

ART. 29.—Attachment of Debts owing from a Firm.

Debts owing from a firm carrying on business within the jurisdiction may be attached (*r*). The garnishee order must be served on any member of the firm, or on the person having the control or management of the partnership business (*s*).

The fact that one or more of the partners are resident abroad does not prevent the attachment being made. An appearance by any member pursuant to an order is a sufficient appearance by the firm.

(*p*) Ord. XLVI. r. 1B.
(*q*) See A. P., Ord. XLVI. r. 1A, p. 636.
(*r*) *I.e.* under Ord. XLV.; see A. P. p. 620.
(*s*) Ord. XLVIIIA. r. 9.

CHAPTER X.

PROCEDURE IN BANKRUPTCY.

ART. 30.—Form of Proceedings.

Any two or more persons being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under the Bankruptcy Act, 1883, in the name of the firm; but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm, or the name of such person, to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct (*t*).

It would seem that where a judgment has been obtained against a firm in the firm-name, a bankruptcy notice under sect. 4, sub-sect. 1 (g) of the Bankruptcy Act, 1883, may be addressed to the firm (*u*), and that, on non-compliance therewith, a joint act of bankruptcy will have been committed, upon which a receiving order may be made against the firm. The effect of this will be as if a receiving order had been made against each person who was a partner at the date of the order.

But this cannot be done where one partner is an infant (*x*).

(*t*) Bank. Act, 1883, s. 115.

(*u*) But see remarks of Williams, L.J., in *In re Frances Handford & Co.*, (1899) 1 Q. B. at p. 570.

(*x*) *Lovell* v. *Beauchamp*, (1894) A. C. 607.

The notice must be issued against the firm "other than A. B.," the infant partner.

Where a firm has been dissolved a petition may be presented in respect of a debt due to such late firm by a member or members of it, and may be signed by one of them in the name of all (*y*).

And in a case where a judgment had been recovered against a firm of "W. Brothers" in an action brought against it after its dissolution, for a debt incurred during the partnership, it was held that bankruptcy proceedings on the judgment would be against the firm notwithstanding the dissolution, and that, therefore, the bankruptcy notice, though addressed to a non-existent firm, was sufficient to support a receiving order under Rule 262 against one partner alone on whom such a notice had been served (*z*).

In order to support a joint petition against all the members of a firm, the acts of bankruptcy must have been committed during the continuation of a joint debt, and the petition must be founded on a joint debt (*a*).

ART. 31.—Married Woman Trading.

A married woman carrying on a trade separately from her husband is, in respect of her separate property, subject to the bankruptcy laws in the same way as if she were a *feme sole* (*b*). But if she carry on business in partnership with her husband she will not be liable to the bankruptcy laws (*c*).

The Bankruptcy Act, 1883, s. 152, expressly states that

(*y*) *In re Hobbs* (1892), 66 L. T. 144.
(*z*) *In re Wenham, Ex parte Battams*, (1900) 2 Q. B. 698; 69 L. J. Q. B. 803; 83 L. T. 94—C. A.
(*a*) Williams on Bankruptcy, p. 151.
(*b*) 45 & 46 Vict. c. 75, s. 1 (5).
(*c*) *Ex parte Coulson* (1888), 20 Q. B. D. 249.

nothing in the Act shall affect the provisions of the Married Women's Property Act, 1882, from which the above article has been taken.

Where a judgment has been obtained against a married woman in a firm-name under which she trades separately from her husband, she cannot be made bankrupt upon it (*d*).

A married woman who has sold a business carried on by her separately from her husband must be deemed to be still carrying on the business within sect. 1, sub-sect. 5, of the Married Women's Property Act, 1882, so long as the debts she has incurred remain unpaid; and therefore in such a case she is subject, under that sub-section, in respect of her separate property, to the bankruptcy laws, so that a receiving order may be made against her at the instance of a trade creditor (*e*).

A married woman who has bought a business out of her separate estate, and is carrying it on as her own, is not the less carrying on a trade separately from her husband within the above sub-section because the business happens to be carried on in the house in which she and her husband are living, and the husband may be taking some part in the management of it (*f*).

"Separate property" does not include a general power of appointment by deed or will of which a married woman is the donee (*g*).

ART. 32.—Effect of Receiving Order.

A receiving order made against a firm has the same effect as if it were a receiving order made against each of the persons who at the time of

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(*d*) Lindley, L.J., in *Frances Handford & Co.*, (1899) 1 Q. B. at p. 570.

(*e*) *In re Worsley*, (1901) 1 K. B. 309; 70 L. J. K. B. 93; 84 L. T. 100—C. A. (*In re Dagnall*, (1896) 2 Q. B. 407, approved).

(*f*) *Ibid.*

(*g*) *Ex parte Gilchrist, In re Armstrong* (1886), 17 Q. B. D. 521.

the order is a partner in the firm (*h*). An order of adjudication cannot, however, be made against a firm in the firm-name, but it must be made against the partners individually (*i*).

Where there is a joint adjudication the whole of the property of the bankrupts, whether partnership or separate property, vests in the trustee and is administered by him (*k*).

It would seem that notwithstanding sect. 123 of the Bankruptcy Act which declares that "a receiving order shall not be made against any partnership" (*k*), when proceedings against partners have been taken in the firm-name the receiving order should be against the firm, but the adjudication must be against the partners individually and not against the firm in the firm-name.

Where a receiving order has been made against a firm which includes an infant in the firm-name, sect. 105 of the Act of 1883 gives the Court ample powers of amendment (*l*).

A receiving order cannot be made against a married woman trading separately from her husband under a firm-name, on the ground of non-compliance with a bankruptcy notice founded upon a judgment obtained against her in the firm-name (*m*).

The Court of Bankruptcy has no jurisdiction to make a receiving order against a foreigner resident out of the jurisdiction, who, without himself coming within the jurisdiction, has carried on business, contracted debts, and has assets there, and has executed out of the jurisdiction an assignment of his property for the benefit of his creditors generally, or has given notice of suspension of payment to creditors within the jurisdiction. Such a person is not a

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(*h*) Bank. Rules, 1886, r. 262.
(*i*) *Ibid.* r. 264.
(*k*) Williams on Bankruptcy, p. 152.
(*l*) *Lovell* v. *Beauchamp*, (1894) A. C. 607.
(*m*) *In re Frances Handford & Co., Ex parte Handford*, (1899) 1 Q. B. 566—C. A.

"debtor" within the meaning of the Bankruptcy Act, 1883 (*n*).

ART. 33.—Power to act by one Partner.

For all or any of the purposes of the Bankruptcy Acts a firm may act by any of its members (*o*).

ART. 34.—Form of Signature.

Where any notice, declaration, petition or other document requiring attestation is signed by a firm of debtors or creditors in the firm-name, the partner signing for the firm must add also his own signature, *e.g.* Brown & Co., by James Green, a partner in the said firm (*p*).

ART. 35.—Form of Declaration or Petition.

Where a firm of debtors file a declaration of inability to pay their debts, or bankruptcy petition, the declaration or petition must contain the names in full of the individual partners, and if such declaration or petition is signed in the firm-name it must be accompanied by an affidavit made by the partner

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(*n*) *In re A. B. & Co.*, (1900) 1 Q. B. 514—C. A., aff. under title *Cooke* v. *Charles A. Vogeler Co.*, (1901) A. C. 102 (*In re Pearson*, (1892) 2 Q. B. 263, followed).

(*o*) Bank. Act, 1883, s. 148.

(*p*) Bank. Rules, 1886, r. 259.

who signs it showing that all the partners concur in filing or presenting it (*q*).

ART. 36.—Service of Notice or Petition.

Any notice or petition for which personal service is necessary is deemed to be duly served on all the members of a firm if it is served at the principal place of business of the firm in England on any of the partners, or upon the person having, at the time of service, the control or management of the partnership business there (*r*).

Service on a receiver and manager appointed by the Court in an action for dissolution of a partnership is not a sufficient compliance with this rule. The person served at the principal place of business as having the control of the business must be in the employ of the firm (*s*).

ART. 37.—Costs.

In the case of a bankruptcy petition against a partnership, the costs, payable out of the estates, incurred up to and inclusive of the receiving order must be apportioned between the joint and separate estates in such proportion as the official receiver may, in his discretion, determine (*t*).

(*q*) Bank. Rules, 1886, r. 261.
(*r*) *Ibid.* r. 260.
(*s*) *Re Flowers & Co.*, (1897) 1 Q. B. 14.
(*t*) Bank. Rules, 1886, r. 127; Bank. Act, 1883, s. 106.

ART. 38.—Statement of Affairs.

Where bankruptcy proceedings are taken against the firm, the debtors must submit a statement of their partnership affairs, and each debtor must also submit a statement of his separate affairs (*u*).

ART. 39.—Consolidation of Petitions.

Where two or more bankruptcy petitions are presented against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as it thinks fit.

Where a partnership has been dissolved, and afterwards separate receiving orders are made against the late partners, and there are joint assets and liabilities still in existence, the Court has jurisdiction to consolidate the proceedings under the separate receiving orders (*x*).

If separate adjudications are obtained against all the members of a firm they may be consolidated and prosecuted as if they were a joint adjudication; and if there is also a joint adjudication an order may be obtained consolidating them all, and staying further proceedings under the separate adjudication (*y*).

(*u*) Bank. Rules, 1886, r. 263.
(*x*) *In re Abbott*, (1894) 1 Q. B. 442.
(*y*) Lindley on Partnership, p. 661.

CHAPTER XI.

ADMINISTRATION OF PARTNERSHIP ESTATES (*a*).

ART. 40.—Order of Administration.

The joint estates, that is, the partnership property, must be applied, in the first instance, in payment of the joint debts, and the separate estate of each partner must be applied, in the first instance, in payment of his separate debts. If there is a surplus of the separate estate it must be dealt with as part of the joint estate. If there is a surplus of the joint estate it must be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate (*b*).

EXCEPTIONS.—(1) Joint creditors of a bankrupt firm may prove against, and receive dividends out of, the separate estates, provided there is no joint estate (*c*) and no solvent partner who can be sued, or if the debt has been incurred by means of a fraud practised

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(*a*) See Pollock on Partnership, pp. 147—173; Lindley on Partnership, p. 708.
(*b*) Bankruptcy Act, 1883 (36 & 37 Vict. c. 40), s. 59.
(*c*) *Re Budgett, Cooper* v. *Adams*, (1894) 2 Ch. 555, 557; 63 L. J. Ch. 847; and see Lindley on Partnership, p. 749.

on the creditor by the partners, or any of them (*c*), or if any partner has fraudulently converted any of the partnership property to his own purposes, then against his separate estate (*d*).

(2) They may also prove against the separate estate of any partner, or against the joint estate of any distinct firm composed of or including any of the partners in the principal firm, when that partner or distinct firm has dealt with the principal firm in a business carried on by such partner or distinct firm as a separate and distinct trade, and the principal firm has become a creditor of such partner or distinct firm in the ordinary way of such dealing (*e*).

The rules for the administration of partnership estates apply in the case of administration of the estates of deceased partners in the Chancery Division and in adjudications in bankruptcy.

The leading principle of administration is, if possible, to pay the debts of the firm (joint debts) out of the assets of the firm (joint estate), and the private debts of each partner (separate debts) out of his own private property (separate estate); in other words, to make each estate pay its own creditors.

Rule 293 of the Bankruptcy Rules of 1886 provides that where a receiving order has been made against debtors in partnership distinct accounts shall be kept of the joint estate, and of the separate estate or estates, and no transfer of a surplus from a separate estate to the joint estate on the ground that there are no creditors under such separate

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(*c*) *Ex parte Adamson* (1878), 8 Ch. Div. 807; 47 L. J. Bank. 103.
(*d*) *Read* v. *Bailey*, 3 App. Cas. 94; 47 L. J. Ch. 161.
(*e*) Lindley, p. 754; Pollock, p. 155.

estate shall be made until notice of the intention to make such transfer has been gazetted.

By Rule 265, where a receiving order is made against a firm the joint and separate creditors shall collectively be convened to the first meeting of creditors.

By Rule 266 the joint creditors, and each set of separate creditors, may severally accept compositions or schemes of arrangement. So far as circumstances will allow a proposal accepted by joint creditors may be approved in the prescribed manner, notwithstanding that the proposals or proposal of some or one of the debtors made to their or his separate creditors may not be accepted.

By Rule 267, where proposals for compositions or schemes are made by a firm, and by the partners therein individually, the proposal made to the joint creditors shall be considered and voted upon by them apart from every set of separate creditors.

By Rule 268, on the adjudication in bankruptcy of a partnership, the trustee appointed by the joint creditors, or by the Board of Trade, under sect. 21 (6) or sect. 87 (3) of the Act of 1883, as the case may be, shall be the trustee of the separate estates. Each set of separate creditors may appoint its own committee of inspection; but if any set of separate creditors do not appoint a separate committee, the committee, if any, appointed by the joint creditors shall be deemed to have been appointed also by such separate creditors.

By Rule 269, if any two or more of the members of a partnership constitute a separate and independent firm, the creditors of such last-mentioned firm shall be deemed to be a separate set of creditors, and to be on the same footing as the separate creditors of any individual member of the firm. And where any surplus shall arise upon the administration of the assets of such separate and independent firm, the same shall be carried over to the separate estate of the partners in such separate and independent firm according to their respective rights therein.

PART II.

PROCEDURE RELATING TO CORPORATIONS, COMPANIES AND OTHER ASSOCIATIONS.

CHAPTER I.

THE ASSOCIATIONS DEALT WITH IN PART II.

Preliminary Observations.

1. CORPORATIONS (*a*), in the proper sense of the term, such as municipal corporations, the members of which are, with hardly an exception, not liable to the debts or for the acts of the body corporate. They must be created either by Royal Charter or by Act of Parliament.

2. Companies chartered or privileged by the Crown.

A chartered company is a corporation existing for the purposes for which it is created by the Crown, and for no other purposes; and those per-

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(*a*) See, as to general powers of County Councils, *Att.-Gen.* v. *London County Council*, (1901) 1 Ch. 781; 70 L. J. Ch. 367; 84 L. T. 245.

sons only are members of it who are declared to be so by the charter, or who have been admitted in compliance with the charter and the bye-laws made in pursuance of it. A charter may be surrendered to the Crown, but a surrender is of no effect unless accepted and enrolled in the Enrolment Department of the Central Office. After the acceptance and enrolment of the surrender the corporation ceases to exist.

3. Companies incorporated by some special Act of Parliament.

Such a company exists as an incorporated company by virtue of the special Act of Parliament incorporating it, and not otherwise.

The Act which each company may succeed in obtaining for itself is called "its special Act," and governs the company as to all matters specially provided for in it. But as to other matters the company (if incorporated since the 8th May, 1845) is governed by the Companies Clauses Consolidation Act, 1845, which applies to every English company incorporated by Act of Parliament since that time, save so far as its clauses and provisions may be expressly varied or exempted by the company's special Act.

4. Companies incorporated by a general Act of Parliament.

Registered Companies.—By far the greatest number of joint stock companies belong to this class. They are all now governed by the Companies Acts, 1862—1900. Registration incorporates the company, and the Registrar's certificate is conclusive evidence that all the statutory requisitions have been complied with.

Every company, with but few exceptions, capable of being registered, may be registered either with or without limited liability, and, in the first case, with the liability limited by shares or guarantee.

5. Societies incorporated on becoming registered under a general Act.

A. Building societies incorporated under the Building Societies Act, 1874.

The society is formed by receiving a certificate of incorporation from the Registrar of Friendly Societies, and when registered it becomes a body corporate by its registered name, having perpetual succession and a common seal, with power to hold land with right of foreclosure, and to purchase or lease buildings for its business purposes (*b*). The liability of the members is limited (*c*). On the in-

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(*b*) Sect. 37. (*c*) Sect. 14.

corporation of the society all rights of action and other rights and interests in real and personal estates belonging to or held in trust for the society vest in it (*d*).

B. Industrial and provident societies incorporated under the Industrial and Provident Societies Act, 1893.

These are a peculiar kind of limited joint stock company. The society is formed by being registered by the Registrar of Friendly Societies (*e*), and when registered it becomes a body corporate by its registered name, having perpetual succession and a common seal, with power to hold land and buildings, and with limited liability.

It can bind itself by promissory notes and contracts in same way as a company registered under the Companies Act, 1862 (*f*).

The Registrar's certificate vests in the society all property that may at any time be vested in any person in trust for it (*g*).

(*d*) Sects. 27 and 28 of Act of 1874 (37 & 38 Vict. c. 42); sects. 3 and 4 of Act of 1877 (40 & 41 Vict. c. 63). See, for instance of illegal society, *In re Ilfracombe Provident Mutual Building Society*, (1901) 1 Ch. 102.

(*e*) 56 & 57 Vict. c. 39, ss. 7 and 8.

(*f*) *Ibid.* sect. 11, Clauses 10 and 12.

(*g*) *Ibid.* sect. 11 (b).

6. Unincorporated companies having officers appointed to sue and be sued.

A. Companies formed under the Letters Patent Act (7 Will. IV. & 1 Vict. c. 73).

The Crown has power by the above Act to grant by letters patent to any company or body of persons, although not incorporated by such letters patent, any privileges which the Crown might at Common Law grant to any company or body of persons by any charter of incorporation. Within three months after the grant of the letters patent a return must be made to the Enrolment Department of the Central Office of the number of shares in the company, its name, the name of its members, date of its commencement, nature of its business, place or principal place where such business is to be transacted, the names of two or more officers to sue and be sued on behalf of the company, and the date of the letters patent. Returns are also required to be made of every change made in the company's principal place of business, and of every change amongst its shareholders, and of the officers by which it is to be sued. These returns are open to public inspection on payment of a small fee. A certified copy of the return can be used as evidence in civil and criminal proceedings. Companies formed under this Act are not corporations.

Their privileges depend on the letters patent obtained by them.

B. Friendly societies (*h*) registered under the Friendly Societies Act, 1896.

C. Trade unions (*i*) registered under the Trade Union Act, 1871.

D. Literary and scientific societies formed under the Literary and Scientific Societies Act, 1854 (*k*).

E. Loan societies formed under the Loan Societies Act, 1841.

7. Cost book mining companies. These are partnerships governed by the general law of partnership, except so far as that law is excluded by local custom, or by special agreement referring to and embodying such custom, and by statute.

8. Unincorporated and unregistered societies.

A. Clubs.

B. Charitable institutions.

9. Foreign corporations and companies.

(*h*) See, as to what societies may be registered, 59 & 60 Vict. c. 25, s. 8.

(*i*) See, as to definition of a trade union, Trade Union Act, 1876, s. 16; and Act of 1871, s. 23 (proviso).

(*k*) See, as to what the Act applies, sect. 33.

Arrangement of subjects dealt with.—First of all the procedure which applies generally to corporations and incorporated companies and societies is dealt with. Then the procedure peculiar to the different sorts of such companies and societies is set out, and is followed by the procedure relating to the societies having officers to sue and be sued, the unincorporated and unregistered societies, and foreign companies, in the order set out above.

CHAPTER II.

PROCEDURE AFFECTING CORPORATIONS AND INCORPORATED COMPANIES AND INCORPORATED SOCIETIES GENERALLY.

FOR the sake of brevity the general terms "corporation" and "company" are used to denote all the above corporate bodies unless the sense shows otherwise.

1. Name to Sue and be Sued in.—A corporation, whether incorporated by charter, special Act of Parliament, or registration, must sue and be sued in its corporate name, and must be represented by a solicitor, who should be appointed under seal, though as far as the other party to the action is concerned the corporation will be bound by the act of its solicitor, though there is no appointment under seal.

2. Address.—The address of the corporation must be its principal place of business. This, in the case of a corporation proper, is the place where its functions are discharged, in the case of a company incorporated by registration in the United Kingdom is its registered address, and in the case of a

trading company incorporated by charter or special Act of Parliament is the place where the administrative business of the company is carried on.

3. Disabilities to Sue and be Sued.—A corporation cannot sue for penalties as a common informer unless expressly authorised by statute (*a*).

A parish council cannot, in their own name, without the Attorney-General, maintain an action to enforce a right of the inhabitants of the parish to the use of a well or spring of water (*b*).

A local authority cannot sue, in the absence of special damage, in respect of a public nuisance except with the sanction of the Attorney-General, in whose name the action should be brought (*c*).

A municipal corporation cannot maintain an action for libel in respect of a letter charging the corporation with corruption, for it is only the individual and not the corporation in its corporate capacity who can be guilty of such an offence (*d*).

Where, owing to the absence of any special

(*a*) *St. Leonard's, Shoreditch, Guardians* v. *Franklin* (1878), 3 C. P. D. 377; 47 L. J. C. P. 727; 39 L. T. 122.

(*b*) *Stoke Parish Council* v. *Price*, (1899) 2 Ch. 277; 68 L. J. Ch. 447; 80 L. T. 643.

(*c*) *Wallasley Local Board* v. *Gracey* (1887), 56 L. J. Ch. 739; 57 L. T. 51; 36 Ch. D. 593; *Tottenham Urban Council* v. *Williamson & Sons*, 65 L. J. Q. B. 591; (1896) 2 Q. B. 353; 75 L. T. 238.

(*d*) *Manchester Corporation* v. *Williams*, (1891) 1 Q. B. 94; 60 L. J. Q. B. 23; 63 L. T. 805.

injury to a particular individual, an action by an ordinary person will not lie against a corporation to restrain it from exceeding its statutory powers, the action may be brought in the name of the Attorney-General (*e*).

A corporation may now generally be sued for tort, *e.g.* for malicious prosecution (*f*), malicious libel (*g*), fraud, deceit, trespass and assault (*h*).

4. Action by Members in Company's Name.—Nothing connected with internal disputes between the shareholders is to be made the subject of an action by some one shareholder on behalf of himself and others, unless there be something illegal, oppressive or fraudulent, or *ultra vires* on the part of the company *quâ* company, so that they are not fit persons to determine it; but every litigation must be in the name of the company if the company really desire it (*i*).

(*e*) *Att.-Gen.* v. *Shrewsbury Bridge Co.* (1882), 21 Ch. D. 752; 51 L. J. Ch. 746; 46 L. T. 687; and *Att.-Gen.* v. *London County Council*, (1901) 1 Ch. 781; 70 L. J. Ch. 367; 84 L. T. 245.

(*f*) *Henderson* v. *Midland Rail. Co.* (1871), 25 L. T. 881.

(*g*) *Nevill* v. *Fine Arts Insurance Co.*, (1895) 2 Q. B. 156.

(*h*) *Butler* v. *Manchester & Sheffield Rail. Co.* (1888), 21 Q. B. D. 207.

(*i*) *MacDougall* v. *Gardiner* (1876), 1 Ch. D. p. 21; 45 L. J. Ch. 27; 33 L. T. 521; *Wall* v. *London and Northern Assets Corporation* (*Limited*), (1898) 2 Ch. 469; 67 L. J. Ch. 596; 79 L. T. 249—C. A.

If the company cannot be made a plaintiff, because the directors refuse their consent, in an action in which it is intended to impeach their conduct, the company must be made a defendant (*k*).

Where there is a corporate body capable of suing, that corporate body is the only proper party to an action to recover money either from its directors or other persons; and the only exception is where the directors and a majority of the shareholders are doing something fraudulent against the minority, who are overwhelmed by them, and have done all they can to obtain a proper authority from the corporate body itself in a public meeting (*l*).

Shareholders suing on behalf of themselves and the other shareholders of a company (other than the defendants) to enforce resolutions passed at meetings of the company are *primâ facie* entitled to join the company as plaintiffs (*m*).

In debenture holders' actions the writ must be entitled in the name of the company (*n*).

(*k*) *Spokes* v. *Grosvenor and West End Hotel Co.*, (1897) 2 Q. B. 124; 66 L. J. Q. B. 572; 76 L. T. 679; and see *Silber Light Co.* v. *Silber* (1879), 12 Ch. D. 717; 48 L. J. Ch. 385; 40 L. T. 96; and *Mason* v. *Harris* (1879), 11 Ch. D. 106; 48 L. J. Ch. 589; 40 L. T. 644; see Buckley, pp. 522, 523.

(*l*) *Gray* v. *Lewis* and *Parker* v. *Lewis* (1873), L. R. 8 Ch. 1035; 43 L. J. Ch. 281; 29 L. T. 12.

(*m*) *Harben* v. *Phillips* (1883), 23 Ch. D. 14; 48 L. T. 334—C. A.

(*n*) Practice Master's Rules; see A. P. 1010.

5. Actions by One Member on behalf of himself and others against the Company.—These are permissible when their object is to obtain relief to which the whole class is entitled, and when the members of the class are so numerous that they cannot all be made parties by name (*o*).

Such actions may be instituted by one or more persons without the consent of the other members of the company; and even against their consent if the object of the action is to prevent or obtain redress in respect of an illegal act.

What is a defence as against the persons suing is a defence to the action.

The statement of claim must show that the persons are shareholders and are suing on behalf of themselves and others.

6. Service of a Writ of Summons on a Corporation.—Where no special statutory provision is made for service of process, every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer or secretary of such corporation (*p*).

It has been held that the word "clerk" means a

(*o*) See Ord. XVI.; A. P. p. 144.
(*p*) Ord. IX. r. 8.

principal officer, like a principal clerk or secretary of a company, not a mere clerk (*q*).

A Colonial Government cannot be effectually served with a writ under this rule because it is not a corporation (*r*).

7. Interrogatories.—In an action by or against a corporation any member or officer may, by leave, be examined on interrogatories (*s*), and he need not be made a party to the action for the purposes of discovery only (*t*).

This applies also to an unincorporated joint stock company, or any other body of persons empowered by law to sue and be sued whether in its own name or in the name of any other officer or other person (*u*).

The application for the order to deliver interrogatories to the member or officer must be served on the body, and, as a rule, on the particular person whom it is sought to interrogate (*x*).

(*q*) *Walton* v. *The Universal Salvage Co.* (1847), 16 M. & W. 438; 4 D. & L. 558; *Mackereth* v. *Glasgow Rail. Co.* (1873), L. R. 8 Ex. 151; 42 L. J. Ex. 82; 28 L. T. 167.

(*r*) *Sloman* v. *Government of New Zealand* (1876), 1 C. P. D. 563; 46 L. J. C. P. 185; 35 L. T. 454.

(*s*) Ord. XXXI. r. 5.

(*t*) *Wilson* v. *Church* (1870), 9 Ch. D. 552; 39 L. T. 413.

(*u*) Ord. XXXI. r. 5.

(*x*) *Chaddock* v. *British South Africa Co.*, (1896) 2 Q. B. 153; 65 L. J. Q. B. 635; 74 L. T. 755.

Such officer answering, on behalf of the body, interrogatories administered to it, is only bound to answer as to his knowledge acquired in the course of his employment by the body, and as to the result of inquiries made by him of the other officers and agents of the body with regard to their knowledge acquired in the same way (*y*).

8. Statement of Claim.—In a statement of claim against a corporation it is sufficient to describe the corporation by its corporate title, without stating that it is a corporation or how it was incorporated (*z*).

9. Enforcing Judgment against Corporations.—A judgment or order against a corporation for the recovery or payment of a sum of money is executed against the corporate property in the same way as a judgment against an individual is executed against his property, *i.e.* by *fi. fa.* or elegit (*a*) without order. As a general rule, only the property of the corporation is liable to satisfy the

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(*y*) *Welsbach Incandescent, &c. Co.* v. *New Sunlight Incandescent Co.*, (1901) 2 Ch. 1—C. A.; 69 L. J. Ch. 546; 83 L. T. 58; and see as to this subject, A. P. (1902), Ord. XXXI. r. 5, pp. 399—401.

(*z*) *Woolf* v. *City Steamboat Co.* (1849), 6 D. & L. 606; 7 C. B. 103.

(*a*) As to what lands can be seized by elegit on judgment against rural sanitary authority, see *Earl Jersey* v. *Uxbridge Rural Sanitary Authority*, (1891) 3 Ch. 183; 60 L. J. Ch. 833; 64 L. T. 858.

judgment, and not the property of the individual members. But a corporation cannot be attached for contempt or for disobedience to an order made upon it.

By R. S. C. Ord. XLII. r. 31, "Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a judge, be enforced by sequestration (*b*) against the corporate property, or by attachment (*c*) against the directors or other officers thereof, or by writ of sequestration against their property."

There must be such wilful disobedience as to constitute it a contempt of Court (*d*).

Obedience to an order made against a corporation will not be enforced under this rule by the attachment of a director of the corporation, unless the order has been served personally on that director (*e*).

It would seem that corporate property is not protected by the Municipal Corporations Act, though directed to be applied to public purposes

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(*b*) See A. P. Ord. XLIII. r. 6, p. 603.

(*c*) See A. P. Ord. XLIV. p. 609.

(*d*) *Fairclough* v. *Manchester Ship Canal Co.*, W. N. (1897) p. 7; *Att.-Gen.* v. *Walthamstow Urban District Council*, 11 Times Rep. 533.

(*e*) *McKeown* v. *Joint Stock Institute*, (1899) 1 Ch. 671; 68 L. J. Ch. 390; 80 L. T. 641.

only, from the claims of persons having demands on the corporation (*f*).

10. Bankruptcy Procedure relating to Corporations, Companies and Societies generally.—The Bankruptcy Act, 1883, s. 148, allows, for all the purposes of the Act, a corporation to act by any of its officers authorized in that behalf under the seal of the corporation (*g*).

By sect. 123, a receiving order may not be made against any corporation, or against any company or association registered under the Companies Act, 1862.

A corporate body may petition in its corporate name, and a company or society authorized to sue and be sued in the name of a public officer may present a petition in his name (*h*).

A company may petition against one of its shareholders (*i*).

A liquidator of a company must petition in the name of the company (*k*).

(*f*) *Arnold* v. *Mayor, &c. of Gravesend* (1856), 25 L. J. Ch. 530; and see *Att.-Gen.* v. *Wilkinson* (1859), 28 L. J. Ch. 392, and (1860), 29 L. J. Ch. 41, as to what property of the guardians of a union can be taken in execution, and as to local board of health, *Worral Waterworks Co.* v. *Lloyd* (1876), L. R. 1 C. P. 719.

(*g*) *Tomkins & Co., J. G., In re*, (1901) 1 Q. B. 476—C. A.

(*h*) *Re Calthrop* (1868), L. R. 3 Ch. 252; 37 L. J. Bk. 17; 18 L. T. 166.

(*i*) Lindley on Companies, pp. 559, 560.

(*k*) Cos. Act, 1862, s. 95; and *In re Shirley, Ex parte Mackay* (1888), 58 L. T. 237.

A purser of a cost-book mining company in whose name an action has been brought under sect. 13 of the Stannaries Act, cannot present a petition in his own name. The petition must be by the company (*l*).

By Rule 455 of Rules of 1886, a bankruptcy petition against, or bankruptcy notice to, any debtor of a company duly authorized to sue and be sued in the name of a public officer or agent of such company, may be presented by or sued out by such public officer or agent as the nominal petitioner for and on behalf of such company, on such company or agent filing an affidavit that he is such public officer or agent, and that he is authorized to present or sue out such petition or bankruptcy notice.

This does not apply to companies registered under the Companies Act, 1862, but only to unincorporated companies and societies authorized to sue and be sued in the name of a public officer.

11. Protection afforded to Public Authorities by the Public Authorities Protection Act, 1893.—By this Act, which is an Act to generalize and amend certain statutory provisions for the protection of persons

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(*l*) *Re Nance, Ex parte Ashmead*, (1893) 1 Q. B. 590; 62 L. J. Q. B. 500; 68 L. T. 733.

acting in the execution of statutory and other public duties, it is enacted that—

1. Where after the commencement of this Act any action, prosecution or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty or authority, the following provisions shall have effect:—

(a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage, within six months next after the ceasing thereof:

(b) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client:

(c) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender,

or is proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment, but this provision shall not affect costs on any injunction in the action:

(d) If, in the opinion of the Court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding, the Court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority.

2. There shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies—

(a) The proceeding is to be commenced in any particular place; or

(b) The proceeding is to be commenced within any particular time; or

(c) Notice of action is to be given; or

(d) The defendant is to be entitled to any particular kind or amount of costs, or the plaintiff is to be deprived of costs in any specified event; or

(e) The defendant may plead the general issue;

and in particular there shall be so repealed the enactments specified in the schedule to this Act to the extent mentioned.

Sect. 3 contains a saving as to Scotland.

"Action" in sect. 1 includes all actions in the Chancery Division, whether they be actions for an injunction or actions partly for an injunction and partly for damages (*m*).

But it does not apply to appeals or interlocutory applications (*n*).

Sect. 1, sub-sect. (b) applies where substantially the defendant obtains judgment, notwithstanding that the judgment as drawn up merely directs the

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(*m*) *Harrop* v. *Mayor of Ossett*, (1898) 1 Ch. 525; 67 L. J. Ch. 347; 78 L. T. 387.

(*n*) *Fielding* v. *Morley Corporation*, (1899) 1 Ch. 1; 79 L. T. 231; 67 L. J. Ch. 611; affirmed, (1900) A. C. 133; 82 L. T. 29; 69 L. J. Ch. 314; and see also *Southwark, &c. Water Co.* v. *Wandsworth Board of Works*, 67 L. J. Ch. 657; (1898) 2 Ch. 603; 79 L. T. 132—C. A.

plaintiff to pay the defendant's costs, without directing how they are to be paid. The judgment itself need not show on its face that the action was one falling within the Act (*o*).

"Judgment" includes an order made in chambers by consent dismissing an action, and the defendants are therefore entitled to costs as between solicitor and client in such a case (*p*).

The discretionary power given to the judge by Ord. LXV. r. 1, to deprive the defendant of his costs is not taken away by this section (*q*).

As to what is "an act done in pursuance," &c., see the cases cited below (*r*).

A company which is incorporated by Act of Parliament not only for the performance of duties of public utility, but also for the purpose of earning profits, such as a railway or harbour company, is not entitled to the benefit of the Act. The words

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(*o*) *North Metropolitan Tramways Co.* v. *London County Council*, (1898) 2 Ch. 145; 67 L. J. Ch. 449; 78 L. T. 711.

(*p*) *Shaw* v. *Hertfordshire County Council*, (1899) 2 Q. B. 282; 68 L. J. Q. B. 857; 81 L. T. 208—C. A.

(*q*) *Bostock* v. *Ramsey Urban District Council*, (1900) 1 Q. B. 357; aff. (1900) 2 Q. B. 616; 69 L. J. Q. B. 945; 83 L. T. 358—C. A.

(*r*) *Cree and Another* v. *The Vestry of St. Pancras*, (1899) 1 Q. B. 693; 80 L. T. 388; 68 L. J. Q. B. 389; *Greenwell* v. *Howell and Another*, (1900) 1 Q. B. 535; 82 L. T. 183; 69 L. J. Q. B. 461; *Grand Junction Waterworks* v. *Hampton Urban Council*, 63 J. P. 503; *Chamberlain* v. *Bradford Corporation*, 83 L. T. 518; *Toms* v. *Clacton Urban Council*, 78 L. T. 712.

in the addition to the title, "acting in the execution of statutory and other public duties," must be read to mean acting in the execution of public duties whether statutory or otherwise (*s*).

The Act applies to an action in respect of a right of action accrued before the Act was passed (*t*).

Sect. 1 (c) does not apply when an action has been discontinued (*u*).

(*s*) *Att.-Gen.* v. *Company of Proprietors of Margate Pier and Harbour*, (1900) 1 Ch. 749; 69 L. J. Ch. 331; 82 L. T. 448; *The Ydun*, (1899) P. 236; 68 L. J. P. 101; 81 L. T. 10.

(*t*) *The Ydun*, *ibid.*

(*u*) *Smith* v. *Northleach Rural District Council* (1901), W. N. 215; 85 L. T. 449.

CHAPTER III.

PROCEDURE IN RELATION TO COMPANIES INCORPORATED BY SOME SPECIAL ACT OF PARLIAMENT.

Acts of Parliament.

Companies Clauses Acts (*a*).

1845. 8 & 9 Vict. c. 16.
1863. 26 & 27 Vict. c. 118.
1868-9. 32 & 33 Vict. c. 48.
1888. 51 & 52 Vict. c. 48.
1889. 52 & 53 Vict. c. 37.

Commissioners Clauses Act.

1847. 10 & 11 Vict. c. 16.

Lands Clauses Acts.

1845. 8 & 9 Vict. c. 18.
1860. 23 & 24 Vict. c. 106.
1868-9. 32 & 33 Vict. c. 18, ss. 3, 4.
1883. 46 & 47 Vict. c. 15.
1895. 58 & 59 Vict. c. 11.
1899. 62 & 63 Vict. c. 30, s. 22, sch. 1.

Railways Clauses Acts.

1845. 8 & 9 Vict. c. 20.
1863. 26 & 27 Vict. c. 32.

Introductory Remarks.

THE special Act of the company governs it as to all matters specially provided for it. But, as has been already stated, several Acts have been passed to consolidate the provisions usually introduced into the special Acts of Parliament obtained by companies, and the provisions of these consolidating Acts are binding on the companies to which they

(*a*) By the Short Titles Act, 1896, s. 2, it has been enacted that the above Acts may be cited by the collective title, The Companies Clauses Acts, 1845—1889.

refer, unless they are expressly varied or exempted by the company's special Act.

Thus, the Companies Clauses Consolidation Act, 1845 (*b*), consolidates the provisions usually introduced into Acts of Parliament incorporating companies for carrying on undertakings of a public nature, and its provisions are binding on all English Companies incorporated by Act of Parliament since it was passed, save so far as its clauses and provisions are expressly varied or exempted by the special Acts incorporating the particular companies.

Railway companies are, in addition to this Act, bound also by the provisions of the Railways Clauses Consolidation Act, 1845 (*c*), which consolidate the provisions usually introduced into Acts of Parliament authorizing the construction of railways, and which applies to every railway constructed since its passing save so far as its provisions are expressly varied or excepted by the special Act authorizing the construction of such railway.

Again, the provisions of the Lands Clauses Consolidation Act, 1845 (*d*), apply to every undertaking authorized by any Act passed subsequent to

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(*b*) 8 & 9 Vict. c. 16.
(*c*) 8 & 9 Vict. c. 20.
(*d*) 8 & 9 Vict. c. 18.

the 8th May, 1845, to purchase and take lands for the purpose of such undertaking, and its clauses and provisions apply to every such undertaking save so far as they are expressly varied or excepted by the special Act giving such powers to the undertaking.

The Commissioners Clauses Consolidation Act, 1847 (*e*), consolidates the provisions usually contained in Acts of Parliament authorizing the execution of undertakings of a public nature by bodies of commissioners, trustees or other persons, not being joint stock companies, and extends to such undertakings or commissioners authorized or constituted by any subsequent Act of Parliament which shall declare the Act to be incorporated with it; its provisions applying to such commissioners and undertakings save so far as they are expressly varied or excepted by the special Act authorizing or constituting the undertaking or commissioners.

It is proposed in this Chapter to deal with the provisions in these four consolidating and subsequent Acts which relate to procedure in actions in which the companies, &c. to which they refer are parties. It must be borne in mind that such provisions are only binding when not expressly

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(*e*) 10 & 11 Vict. c. 16.

varied or excepted by anything in the special Act of the company, &c.

The procedure will be dealt with only so far as it differs from the rules governing corporate bodies generally, which have already been set out in Chapter II.

1. Name to Sue and be Sued in.—Corporate bodies must, as has already been stated, sue and be sued in their corporate title. In the case of commissioners for public undertakings, the Commissioners Clauses Act, 1847 (*f*), s. 61, directs that in all actions and suits in respect of any matter or thing relating to this Act or the special Act, to be brought by or against the commissioners, it shall be sufficient, where such commissioners are not a body corporate, to state the names of any two of the commissioners, or the name of their clerk, as the plaintiff or defendant representing the commissioners in any such action or suit, and no action is to abate or be discontinued by reason of the death of any such commissioner or his ceasing to be a commissioner, or by the death, suspension or removal of such clerk.

2. Service of Proceedings.—A. Under Companies Clauses Consolidation Act, 1845, s. 135, and Rail-

(*f*) 10 & 11 Vict. c. 16.

ways Clauses Consolidation Act, 1845, s. 138, any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the company may be served by the same being left at, or transmitted through the post directed to, the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary, then by being given to any one director of the company.

The principal office is the place where the administrative part of the business or undertaking is carried on.

In *Palmer* v. *Caledonian Rail. Co.* (*g*), defendants were a railway company domiciled in Scotland, but having six miles of line in England, with a railway station at Carlisle, their principal office being at Glasgow. The private Act of the company incorporated the Companies Clauses Consolidation (Scotland) Act, 1845 (*h*), and the Companies Clauses Consolidation Act, 1845 (*i*), as to such part of their line as was in England. The plaintiff brought his action for breach of contract and false imprisonment, and served his writ by

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(*g*) (1892) 1 Q. B. 823—C. A.; 61 L. J. Q. B. 552; 66 L. T. 771 (*Wilson* v. *Caledonian Rail. Co.*, 5 Ex. 822, disapproved).

(*h*) 8 & 9 Vict. c. 17.

(*i*) 8 & 9 Vict. c. 16.

leaving it at the office of the district traffic manager at Carlisle. It was held that the service was bad because—

(1) the defendants were a Scotch company, notwithstanding the fact that a part of their line was in England;

(2) the service was not at the principal office within sect. 135 of the Companies Clauses Consolidation Act, the principal office being that at which the control and management of the undertaking was carried on;

(3) the application of Ord. IX. r. 8 (*k*), was excluded by the incorporation in the defendants' special Act of the statutory provisions relating to service contained in the Companies Clauses Consolidation (Scotland) Act, 1845 (*l*).

Service on a director when a secretary exists and where the company has no office is bad (*m*).

B. Under Lands Clauses Consolidation Act, 1845. By sect. 134 of this Act, any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the

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(*k*) See p. 67.
(*l*) 8 & 9 Vict. c. 17, s. 137.
(*m*) *Lawrenson* v. *Dublin Rail. Co.* (1878), 37 L. T. 32—C. A.

undertaking may be served by the same being left at, or transmitted through the post directed to, the principal office of the promoters, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary, the solicitor of the said promoters.

C. Under the Commissioners Clauses Act, 1847 (*n*). By sect. 9, any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the commissioners may be served by the same being left at, or sent through the post directed to, the commissioners at their principal office, or one of their principal offices where there shall be more than one, or by being given personally to the clerk, or in case there be no clerk, then by being given to any one commissioner.

3. Notice of Action.—Railway and other companies are sometimes entitled by their special Act to notice in writing before an action can be brought against them for anything done or omitted to be done in pursuance of the Act, or in the execution of the powers or authorities given by the Act.

But this does not prevent the Court from grant-

(*n*) 10 & 11 Vict. c. 16.

ing an injunction to restrain a nuisance being committed or continued (*o*), or to restrain an immediate injury being inflicted (*p*), notwithstanding that notice has not been given.

Service of the notice must, in the absence of regulations in the special Act, be effected in accordance with the rule above (*q*). In a case against the Great Western Railway Company (*r*) for an overcharge for carriage of goods from Bristol to London, in which service of the notice required by the special Act was effected on the superintendent of the Bristol station, the service was held bad, as it should have been effected under the Railways Clauses Consolidation Act, s. 138 (*s*).

The want of notice must be pleaded or it cannot be made use of (*t*).

4. Actions for Calls.—By sect. 25 of the Companies Clauses Consolidation Act (*u*), if at the time appointed by the company for the payment of any call any shareholder fails to pay the amount of

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(*o*) *Att.-Gen.* v. *Hackney Board of Works* (1875), L. R. 20 Eq. 626; 44 L. J. Ch. 545; 33 L. T. 244.

(*p*) *Flower* v. *Low Leyton Local Board* (1877), 5 Ch. D. 347; 46 L. J. Ch. 621; 36 L. T. 760.

(*q*) Page 82.

(*r*) *Garton* v. *Great Western Rail. Co.* (1858), 27 L. J. Q. B. 375; 6 W. R. 677.

(*s*) 8 & 9 Vict. c. 20, s. 136; and see p. 82.

(*t*) *Davey* v. *Warne* (1846), 15 L. J. Ex. 253.

(*u*) 8 & 9 Vict. c. 16.

such call, the company may sue such shareholder for the amount thereof in any Court of law or equity having competent jurisdiction, and recover the same with lawful interest from the day on which such call was payable.

By sect. 21, "shareholder" includes the legal personal representative of any shareholder. But an executor cannot be sued for a call made in his testator's lifetime (*x*).

By sect. 22, twenty-one days' notice at the least must be given of each call. The shareholder must pay the amount of such call to the persons and at the times and places appointed by the company.

By sect. 26, the statement of claim in such actions need only declare that the defendant is the holder of one or more shares (*y*) (specifying the number), and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more, upon one share or more (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this and the special Act (*z*).

(*x*) *Birkenhead, &c. Rail. Co.* v. *Cotesworth* (1850), 5 Ex. 226; 19 L. J. Ex. 240.

(*y*) This means at the times the calls were made: *Belfast, &c. Rail. Co.* v. *Strange*, 1 Ex. 739.

(*z*) See now Ord. XIX. r. 4; A. P. p. 238.

This form is not applicable in an action for calls against an executor, where the calls were made in the lifetime of the testator (*a*).

By sect. 27, at the trial or hearing of such action it need only be proved that the defendant was a shareholder in the undertaking at the time of making a call, that such call was in fact made, and such notice thereof given as is directed by this or the special Act.

By sect. 28, the production of the register of shareholders (*b*) is to be *primâ facie* evidence of such defendant being a shareholder, and of the number and amount of his shares.

This means the sealed register (*c*). It need not be proved that the seal was affixed to the register at a general meeting of the company (*d*). The register must have been strictly kept in accordance with the provisions of the Act (*e*).

A defendant may, of course, disprove the *primâ facie* liability arising from his name being upon the

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(*a*) *Birkenhead, &c. Rail. Co.* v. *Cotesworth* (1850), 5 Ex. 226 : 19 L. J. Ex. 240.

(*b*) 8 & 9 Vict. c. 16, s. 9.

(*c*) *Birkenhead, &c. Rail. Co.* v. *Brownrigg* (1849), 4 Ex. 426 ; 19 L. J. Ex. 27.

(*d*) *London & North Western Rail. Co.* v. *Michael* (1850), 5 Ex. 855.

(*e*) *Bain* v. *Proprietors of Whitchaven, &c. Rail. Co. and Forbes* (1850), 3 H. L. Cas. at p. 22 ; and see, as to these sections generally, Rawlins & Macnaghten on Companies, pp. 22, 23.

register, by showing that the company had no authority to put and ought not to have put his name there (*f*).

5. Change in Name of Company.—By the Companies Clauses Act, 1863 (*g*), s. 37, no action or other proceeding is to abate or be affected by reason of a change in the name of the company. The company is simply to be described by its new name with no reference to the change, and as if it had been originally called by that name.

6. Amalgamation of Companies.—The Railways Clauses Act, 1863 (*h*), s. 43, provides that where one company is amalgamated with another no pending action is to be abated or prejudicially affected in any way by such amalgamation, but may be continued or enforced by or against the amalgamated company either solely or, as the case may require, with such other company.

7. Enforcement of Award settling Amount of Compensation or Purchase Money under the Lands Clauses Acts.—Where the amount of purchase-money or compensation has been ascertained in any of the ways

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(*f*) *Waterford, &c. Rail. Co.* v. *Pidcock* (1853), 8 Ex. 279; *Newry, &c. Rail. Co.* v. *Edmunds* (1848), 2 Ex. at p. 126.

(*g*) 26 & 27 Vict. c. 118.

(*h*) 26 & 27 Vict. c. 92.

provided for in the Acts the award is enforced by action. When the value of lands has been properly assessed either party can sue for specific performance of the complete contract thereby constituted (*i*).

The promoters, if the owner will not convey, can pay the price into Court and take possession of the lands (*k*).

When they have paid the price they are entitled to have the amount of deposit paid out to them (*l*).

The owner after tendering a conveyance may bring an action for the amount assessed either for price or compensation.

Under the Arbitration Act, 1889, an award can also be enforced, by leave of the Court, in the same way as a judgment or order, but as it only settles the amount of compensation and not the title to receive it, this course is rarely adopted, and is appropriate only when the right to compensation and the title of the claimant are both clear (*m*).

If questions of law arise on the arbitration the arbitrator must, if required, state them by special case for the opinion of the High Court, or may

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(*i*) *R.* v. *Edwards* (1884), 13 Q. B. D. 586.

(*k*) 8 & 9 Vict. c. 18, ss. 76, 77.

(*l*) *Ex parte Midland Rail. Co.*, W. N. (1894) 38.

(*m*) *Brierley Hill Local Board* v. *Pearsal* (1883), 9 App. Cas. 595; 54 L. J. Q. B. 25; 51 L. T. 577; and *Oliver and Scott's Arbitration* (1890), 43 Ch. D. 310; 59 L. J. Ch. 148; 61 L. T. 552.

draw the award in the form of a special case which can be considered by the High Court, and, on appeal, by the Court of Appeal (*n*).

In the case of railway undertakings the promoters, where there is a compulsory taking or injurious affecting, may, under sect. 41 of the Regulation of Railways Act, 1868 (*o*), apply for trial of the question in the High Court by a judge and jury, or judge alone, to a master in chambers, and, on appeal, to a judge in chambers (*p*).

8. Execution against Company.—For the way in which a judgment is enforced against a corporate body by execution, see Chapter II. *supra* (*q*). As regards railway companies, a restriction on execution against its personal property is contained in the Railway Companies Act, 1867 (*r*).

By sects. 4 and 5, the rolling stock and plant are protected from seizure, but a judgment creditor of such a company can obtain a receiver of the earnings of the company (*s*), and can issue execution

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(*n*) *In re Gonty and M. S. & L. Rail. Co.*, (1896) 2 Q. B. 439; 65 L. J. Q. B. 625; 75 L. T. 239.

(*o*) 31 & 32 Vict. c. 119.

(*p*) *In re Donisthorpe and M. S. & L. Rail. Co.*, (1897) 1 Q. B. 671; 66 L. J. Q. B. 399; 76 L. T. 371; and *Oliver's Claim* (1890), 24 Q. B. D. 507; 63 L. T. 147—C. A.

(*q*) Pages 69, 70.

(*r*) 30 & 31 Vict. c. 127; made perpetual by 38 & 39 Vict. c. 31.

(*s*) *In re Manchester and Milford Rail. Co.* (1880), 14 Ch. D. 645; see *ibid.*, (1897) 1 Ch. 276; 66 L. J. Ch. 139; 75 L. T. 416.

against its unprotected property, and obtain a sale of its surplus lands (*t*).

9. Execution against Shareholders.—Creditors of the company cannot proceed by action against the shareholders, but must obtain judgment against the company and then proceed upon the judgment. But recourse must be had to the assets of the company before it can be had to the shareholders individually. The Court must be satisfied that the creditor applying for leave to proceed against a shareholder under Ord. XLII. r. 23 (*u*), has no means of obtaining present payment of his judgment debt except from them individually. The creditor must prove that he has made reasonable attempts to obtain payment from the company, and to discover assets presently available for the satisfaction of his debt, and that such attempts have been unsuccessful (*x*).

The Companies Clauses Consolidation Act, 1845, s. 36, provides that execution may be issued, by order of the Court made on motion, and after suffi-

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(*t*) *Hull, Barnsley, &c. Rail. Co.* (1889), 40 Ch. D. 119, *per* Lindley, L.J., at p. 130; 58 L. J. Ch. 205; 59 L. T. 877.

(*u*) See p. 93.

(*x*) Lindley on Companies, p. 291; *Hutchins* v. *Kilkenny, &c. Rail. Co.* (1854), 15 C. B. 459; and see *Nixon* v. *Kilkenny, &c. Rail. Co.* (1856), 1 H. & N. 47; 25 L. J. Ex. 249; and *Ilfracombe Rail. Co.* v. *Devon, &c. Rail. Co.* (1866), L. R. 2 C. P. at p. 19.

cient notice given to the shareholder, against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up, if first execution shall have been issued against the property and effects of the company and there cannot be found sufficient whereon to levy such execution.

"Any of the shareholders" means any of the shareholders at the time execution against the company is found to be ineffectual, *i.e.* in ordinary cases, at the time of the sheriff's return of *nulla bona* (*y*).

"Shareholder" is defined by sect. 3 to mean any "shareholder, proprietor or member of the company," and applies to a corporation as well as an ordinary person.

By sect. 8, every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered upon the register of shareholders, shall be deemed to be a shareholder of the company.

The company's register of shareholders is *primâ facie* sufficient (but not conclusive) proof that a person whose name is on it is a shareholder (*z*).

(*y*) *Nixon* v. *Green* (1858), 3 H. & N. at p. 701.

(*z*) *Nixon* v. *Green* (1856), 11 Ex. 550; 25 L. J. Ex. 209; affirmed

It has not been decided as to how far the requirement of notice to the shareholder applies to the procedure now under Ord. XLII. r. 23.

That order provides that "where a party is entitled to execution against any of the shareholders of a company upon a judgment recorded against such company, or against a public officer or other person representing such company, the party alleging himself to be entitled to execution may apply to the Court or a judge for leave to issue execution accordingly. And such Court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or judge may impose such terms as to costs or otherwise as shall be just."

A creditor may, under this rule, execute his judgment against any member or members he may choose to select, provided he acts *bonâ fide* for the purpose of obtaining payment of what is due to him (*a*).

In the cases where a company has no assets

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under title *Nixon* v. *Brownlow* (1858), 3 H. & N. 686; 27 L. J. Ex. 509.

(*a*) Lindley on Companies, p. 282.

which can be reached by the ordinary methods of execution, but at the same time there is due to it from one or more of its shareholders an amount still unpaid on the shares he or they hold, a creditor of the company can proceed under this rule to obtain direct execution against such shareholder or shareholders.

Sect. 62 of the Commissioners Clauses Act, 1847, provides that execution upon every judgment or decree against the commissioners, in any action or suit against them as such, shall be levied on the goods, chattels or personal effects belonging to the commissioners by virtue of their office, and shall not extend to the private land or goods of the commissioners.

10. Liability of Directors.—By sect. 100 of the Companies Clauses Consolidation Act, 1845, no director is to be subject to be sued by being a party to or executing in his capacity of director any contract or other instrument on behalf of the company, or lawfully executing any of the powers given to the directors, and their persons and property are not liable to execution for such acts.

By sect. 60 of the Commissioners Clauses Act, 1847, the commissioners are not to be personally liable for acts done in the capacity of commissioners, and are not to be sued for such acts, nor may

execution be levied against them or their goods for such acts.

11. Scheme of Arrangement, Railway Company.—The Railway Companies Act, 1867 (*b*), s. 6, provides that where a company is unable to meet its engagements with its creditors, the directors may prepare a scheme of arrangement between the company and its creditors. This must be filed in the Chancery Division (*c*) together with a declaration in writing under the common seal of the company to the effect that the company is unable to meet its engagements with its creditors, and with an affidavit of the truth of such declaration made by the chairman of the board of directors, and by the other directors or the major part in number of them, to the best of their respective judgment and belief.

Sect. 7 gives the Court power, after the scheme has been filed, to restrain any action against the company on such terms as the Court thinks fit.

Sects. 8 and 9 provide that after publication of notice of filing of the scheme in the *London Gazette*, no execution, attachment or other process against the property of the company shall be available

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(*b*) 30 & 31 Vict. c. 127.

(*c*) Now the Writ, &c. Department of the Central Office.

without leave of the Court to be obtained on summons or motion in a summary way.

Sect. 18 provides that the scheme when confirmed shall be enrolled in the Court (*d*), and the provisions thereof shall have the same effect as if they had been enacted by Parliament.

The scheme is entitled "In the matter of the Railway Companies Act, 1867," and of the company in question, and on being filed is assigned by ballot to a Chancery judge. Any person claiming to be interested may enter an appearance after a petition to confirm the scheme has been presented, and any party may obtain a certificate that the scheme has been duly filed on payment of a fee of 5*s*. (*e*).

(*d*) The scheme is enrolled in the Enrolment Department of the Central Office. See Ord. LXI. r. 10; A. P. p. 870.

(*e*) See A. P. Ord. LXI. r. 11, p. 870.

CHAPTER IV.

PROCEDURE IN RELATION TO COMPANIES REGISTERED UNDER THE COMPANIES ACTS, 1862—1900.

Acts of Parliament.

1862. 25 & 26 Vict. c. 89 (*a*).
1867. 30 & 31 Vict. c. 131.
1877. 40 & 41 Vict. c. 26.
1879. 42 & 43 Vict. c. 76.
1880. 43 Vict. c. 19.
1890. 53 & 54 Vict. c. 63 (Winding-Up).
1890. 53 & 54 Vict. c. 64 (Directors' Liability).
1893. 56 & 57 Vict. c. 58 (Winding-Up).
1897. 60 & 61 Vict. c. 19 (ditto).
1900. 63 & 64 Vict. c. 48 (Amendment).

1. Name to Sue and be Sued in.—The company must sue and be sued in its registered name, with the addition of the word "limited" if it be one registered with limited liability. The company must be described as of its registered address, and must sue and appear by a solicitor. By sect. 13 of the Companies Act, 1862, a change in the name of the company is not to affect any right or obligation of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be

(*a*) Collective title (Companies Acts, 1862 to 1900) given by 59 & 60 Vict. c. 14; 61 & 62 Vict. c. 26, s. 3; 63 & 64 Vict. c. 48, s. 36.

continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. The change of name is not complete until it has been made upon the register, and a certificate of incorporation altered to meet the circumstances of the case has been issued by the registrar. Until the certificate has been obtained the company does not exist by its new name, but is considered as still existing under its original name (*a*).

Actions by Companies being wound up.—Actions by companies being wound up must be instituted by the liquidator, who must sue in the name of the company (*b*), and whose name does not appear in the proceedings as a party to the action at all. An official liquidator must obtain leave of the Court unless that is dispensed with under sect. 96 of the Companies Act, 1862. In the case of a voluntary winding-up, or a winding-up under the supervision of the Court, power to sue is given by sect. 133, sub-sect. 7, and sect. 151 respectively, and in this case no sanction of the Court is necessary.

(*a*) *Shackleford & Co.* v. *Dangerfield* (1868), L. R. 3 C. P. 407; 37 L. J. C. P. 151; and see Buckley on Companies, p. 20.

(*b*) *Cape Breton Co.* v. *Fenn* (1881), 17 Ch. D. 198; 50 L. J. Ch. 321; 44 L. T. 445; and 25 & 26 Vict. c. 89, s. 95; and sect. 12 of Cos. (Winding-Up) Act, 1890; and see Buckley, p. 302.

In an action by the liquidator in the company's name the defendant may set off a claim for unliquidated damages, or raise such a claim by counter-claim without any leave from the Court before which the winding-up proceedings are pending (*c*).

The service of a bankruptcy notice is a legal proceeding within the meaning of sect. 95. Such a notice must be in the name of the company, and not in the liquidator's name (*d*).

2. Security for Costs (*e*).—Sect. 69 of the Act of 1862 provides that where a limited company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony (*f*) that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

(*c*) *Mersey Steel and Iron Co.* v. *Nayler* (1882), 9 Q. B. D. 648; 51 L. J. Q. B. 576; 47 L. T. 369—C. A.

(*d*) *In re Winterbottom* (1886), 18 Q. B. D. at pp. 448, 450; 56 L. J. Q. B. 238; 56 L. T. 168; cp. *In re Nance*, (1893) 1 Q. B. 590; 62 L. J. Q. B. 500; 68 L. T. 733.

(*e*) See Buckley, pp. 221, 222; and A. P. 1902, Ord. LXV. r. 6, p. 940.

(*f*) See *City of Moscow Gas Co.* v. *International Financial Society* (1872), L. R. 7 Ch. 225; 41 L. J. Ch. 350; 26 L. T. 377.

An unlimited company, it seems, cannot be ordered to give security, even if it be insolvent and is being wound up (*g*).

The application is made to a master in chambers, and must be supported by affidavit showing reason for the belief that the assets will be insufficient to pay the defendant's costs if he prove successful. In the absence of any evidence to the contrary, the fact that the company is in liquidation affords a sufficient reason for ordering security to be given (*h*).

Where there are ample goods within the jurisdiction upon which execution could be levied security ought not to be ordered (*i*).

Security may be ordered at any stage of the proceedings. It has been held that, in a proper case, the Court will order security to be given on an application made by the defendant even after notice of trial (*j*).

The security should be for an amount equal to

(*g*) *United Ports Co.* v. *Hill* (1870), L. R. 5 Q. B. 395; 39 L. J. Q. B. 227; 23 L. T. 14. But this does not apply to appeals.

(*h*) *Northampton Coal, &c. Co.* v. *Midland Waggon Co.* (1878), 7 Ch. D. 500; 38 L. T. 82. As to whether the Court has power to refuse the order in such case, see *Pure Spirit Co.* v. *Fowler* (1890), 25 Q. B. D. 235; 59 L. J. Q. B. 537; 63 L. T. 559.

(*i*) *In re Apollinaris Co.'s Trade Marks*, (1891) 1 Ch. 1; 63 L. T. 502.

(*j*) *Lydney, &c. Iron Ore Co.* v. *Bird* (1883), 23 Ch. D. 358; 52 L. J. Ch. 640; and Ord. LV. r. 2.

the probable amount of the defendant's costs, and is not limited to any arbitrary sum (*k*).

3. Service of Writ, &c.—By sect. 62 of the Companies Act, 1862 (*l*), any summons, notice, order, or other document required to be served upon the company may be served by leaving the same at, or sending it through the post in a prepaid letter addressed to the company at their registered office.

By sect. 63, any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

Where service is effected through the post the writ is deemed to be served on the day following that on which the letter was posted.

Where service is effected by leaving the summons, &c. at the registered office of the company, it is not necessary to show with whom it was left. It may be left with a director (*m*).

(*k*) *Dominion Brewery* (*Limited*) v. *Fowler* (1898), 77 L. T. 507; and *Imperial Bank of China, India and Japan* v. *Bank of Hindustan, China and Japan*, L. R. (1866), 1 Ch. 437; 35 L. J. Ch. 445; 14 L. T. 611.

(*l*) 25 & 26 Vict. c. 89.

(*m*) *Watson* v. *Sheather*, 2 Times Rep. 473.

The above sections apply to a writ of summons, and the directions must be strictly followed (*n*). An originating notice of motion (*o*), it seems, may, and a summons to appear to an information under the Food and Drugs Act (*oo*) must, be served the same way. The sections do not apply to a company registered in Scotland or Ireland (*p*).

4. Actions for Calls—Statement of Claim.—In any action or suit brought by the company against any member to recover any call or other moneys due from such member in his character of member, it is sufficient to allege in the statement of claim that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due whereby an action or suit hath accrued to the company (*q*).

5. Execution.—Execution is issued against the company and its assets and effects taken in the same way as in the case of an individual. Shareholders are, however, not liable to execution on judgments

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(*n*) *Wood* v. *Anderton & Co.* (1888), 36 W. R. 918.

(*o*) *In re Denver Breweries Co.* (1890), 63 L. T. 96.

(*oo*) *Pearks, Gunston & Tee* (*Limited*) v. *Richardson*, (1902) 1 K. B. 91; 71 L. J. K. B. 18.

(*p*) See *post*, p. 148.

(*q*) Cos. Act, 1862 (25 & 26 Vict. c. 89), s. 70; but see now Ord. III. r. 6, and Ord. XIX. rr. 1, 2, 4 and 5; and see *Peninsular Co.* v. *Fleming* (1873), 27 L. T. 93; and cp. 8 & 9 Vict. c. 16, s. 25, *supra*, p. 86.

against the company as in the case of railway companies (*r*), but must be proceeded against under the winding-up provisions (*s*).

6. Companies being Wound up—Stay of Proceedings (*t*).—By the Companies Act, 1862, s. 85, the Court has power at any time after presentation of a petition for winding-up a company under this Act, and before making an order for winding it up, upon the application of the company, or any creditor or contributory of the company, to restrain further proceedings in any action, suit or proceeding against the company upon such terms as the Court thinks fit.

In staying an action commenced before the winding-up, whether such winding-up is by the Court or voluntary, the Court allows the creditor, on proving, to add to his debt the costs of the action down to the time of his receiving notice of the winding-up (*u*). A creditor who commences an action against a company after notice of a winding-up will be ordered to pay the costs of the action and of the motion to stay (*x*).

(*r*) See *supra*, p. 91; and, as to priority of execution creditors over intended debenture-holders, *Simultaneous Colour Printing Co.* v. *Foweraker*, (1901) 1 K. B. 771; 70 L. J. K. B. 453.

(*s*) 25 & 26 Vict. c. 89, s. 195.

(*t*) See Buckley, pp. 259—274 and 281—285; and Rawlins & Macnaghten on Companies, pp. 311, 312, 314—318.

(*u*) *In re Keynsham Co.* (1863), 33 Beav. 123.

(*x*) *In re East Kent Shipping Co.* (1868), W. N. 206.

Sect. 87 enacts that after an order has been obtained for winding-up a company under this Act no suit, action or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose.

Leave is obtained by summons, which must be served on the official liquidator. After leave has been obtained the writ must be served personally on him also. A mortgagee of a company is entitled to leave to commence or continue an action to realise his security, for the property is *pro tanto* his (*y*). In other cases it is a matter of convenience for the discretion of the Court.

Leave has been given to continue an action for specific performance (*z*), and for damages under Lord Campbell's Act (*a*).

It will not be given on an *ex parte* application (*b*). This section applies in the case of a winding-up under supervision (*c*).

(*y*) *In re David Lloyd & Co.* (1877), 6 Ch. D. 339; 37 L. T. 83.

(*z*) *Thames Plate Glass Co.* v. *Land Telegraph Co.* (1870), L. R. 11 Eq. 248; 40 L. J. Ch. 165; 24 L. T. 227.

(*a*) *In re Thurso New Gas Co.* (1889), 42 Ch. D. 491; 61 L. T. 351.

(*b*) *Western and Brazilian Telegraph Co.* v. *Bibby* (1880), 42 L. T. 821.

(*c*) Sect. 151 of Act of 1862.

In a proper case the Court will order the plaintiff to pay the costs of the application to stay (*d*). Proceedings in any part of the United Kingdom may be stayed under this section (*e*).

Sect. 163 makes void, where any company is being wound up by the Court or subject to its supervision, any attachment, sequestration, distress or execution which is put into force against the estate and effects of the company after the commencement of the winding-up.

This section is to be read with, and is controlled by, the two sections 85 and 87, *supra*. Therefore, notwithstanding its emphatic wording, the Court may still in its discretion allow a credit to proceed by execution (*f*).

A winding-up of a company by the Court is deemed to commence at the time of the presentation of the petition for its winding-up (*g*).

The application to stay an action in the High Court must be made in the action, and not to the judge in whose Court the company is being wound

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(*d*) *Freeman* v. *General Publishing Co.*, (1894) 2 Q. B. 380; 63 L. J. Q. B. 678; 70 L. T. 845.

(*e*) *In re International Pulp Co.* (1876), 3 Ch. D. 594; 45 L. J. Ch. 446; 35 L. T. 229.

(*f*) *Exhall Mining Co., In re* (1863), 4 De G. J. & S. 377; and *Railway Plant and Steel Co., In re, Taylor, Ex parte* (1878), 8 Ch. D. 183; 47 L. J. Ch. 321; 38 L. T. 475.

(*g*) 25 & 26 Vict. c. 89, s. 84.

up (*h*). Application must, however, be made to him to stay any other actions.

The Companies (Winding-up) Act, 1890, has not altered the practice in this respect (*i*).

It is made *ex parte* upon affidavits of the facts, and is absolute in the first instance (*j*).

Ord. XLIX. r. 5 gives power to any judge of the Chancery Division who has made an order for the winding-up of any company, and in whose Court such winding-up is pending, to order the transfer to himself of any cause or matter pending in any other Court or Division brought or continued by or against such company (*k*).

The order for the transfer may be made *ex parte* on the application of the parties in either action (*l*).

The Court will not interfere so readily to stay an execution as any other proceeding (*m*). Where a creditor has actually issued execution against a company before a petition to wind it up has been

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(*h*) *In re Artistic Colour Printing Co.* (1880), 14 Ch. D. 502; 49 L. J. Ch. 526; 42 L. T. 803.

(*i*) *General Service Co-operative Stores*, (1891) 1 Ch. 496; 60 L. J. Ch. 586; 64 L. T. 272—C. A.

(*j*) *Masbach* v. *Anderson* (1878), 37 L. T. 440.

(*k*) *In re Landore-Siemens Steel Co.; In re Poole* (1886), 55 L. T. 56.

(*l*) See A. P. 1902, p. 669.

(*m*) See Lindley on Companies, p. 676; and Buckley, pp. 259—264.

presented, and the sheriff is in possession when it is presented, the Court will not interfere and deprive the creditor of the fruits of his diligence (*n*), unless under very special circumstances (*o*), such as oppression or fraud. But as a rule, if the sheriff does not seize before the commencement of the winding-up, the execution will be stayed (*p*), and receivers appointed in the same interval will be restrained from acting (*q*).

The Court will not interfere with creditors who have obtained judgment against the company in actions brought by or against it by its liquidators (*r*).

7. Company being wound up voluntarily.—Where a company is being voluntarily wound up, the above rules as to staying proceedings do not apply (*s*); but upon the application of the liquidators or any of the contributories of such companies, the Court

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(*n*) *In re Great Ship Co.* (1864), 33 L. J. Ch. 245; and *Withernsea Brickworks* (1880), 16 Ch. D. 337; 50 L. J. Ch. 185; 43 L. T. 713; *In re West Cumberland Iron Co.*, (1893) 1 Ch. 713; 62 L. J. Ch. 367; 68 L. T. 751.

(*o*) *In re Perkins Beach Lead Mining Co.* (1877), 7 Ch. D. 371; 37 L. T. 604.

(*p*) *Ex parte Railway Steel, &c. Co., In re Williams* (1878), 8 Ch. D. 192.

(*q*) *Perry* v. *Oriental Hotels Co.* (1870), 5 Ch. 420; 23 L. T. 525; *Croshaw* v. *Lyndhurst Ship Co.*, (1897) 2 Ch. 154; 66 L. J. Ch. 576; 76 L. T. 553.

(*r*) *Re Mackrell Smith* (1868), 3 Ch. 125.

(*s*) 25 & 26 Vict. c. 89, s. 138.

is empowered to restrain creditors from proceeding with actions, &c., in like manner as it can where the company is being wound up by the Court (*t*).

By sect. 25 of the Companies Act, 1900, a creditor may also apply under sect. 138 of the Act of 1862.

The Rules of 1886 (r. 51) provide that such an application shall be by petition or motion, or by summons if the judge shall so direct. If an application made by summons without any direction comes on for hearing, the judge can then give the necessary direction that it be made by summons (*u*).

8. Action on Garnishee Order.—An action for debt will lie on a garnishee order, but should not be resorted to if the amount can be recovered by execution under Ord. XLV. r. 3 of the Rules of the Supreme Court. Where a garnishee order absolute had been obtained under that rule against a limited company having property abroad, but none in this country on which execution could be levied, it was held by the Court of Appeal that under

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(*t*) Sect. 138 of the Cos. Act, 1862; and see, for difference between compulsory and voluntary winding-up, *Moore* v. *City and County Bank*, W. N. (1875) 240.

(*u*) *In re British Envelope Co.* (1885), W. N. 84.

Ord. XLII. r. 24, the garnishee could maintain an action on the garnishee order for the debt thereby ordered to be paid to him by the company, the garnishees, with a view to his presenting a petition, as a judgment creditor, for winding-up the company (*x*).

(*x*) *Pritchett* v. *English and Colonial Syndicate*, (1899) 2 Q. B. 428; 68 L. J. Q. B. 801; 81 L. T. 206.

CHAPTER V.

BUILDING SOCIETIES.

ACTS OF PARLIAMENT.

1836. 6 & 7 Will. IV. c. 32 (before 1874).
1874. 37 & 38 Vict. c. 42 (General).
1875. 38 & 39 Vict. c. 9 (before 1874).
1877. 40 & 41 Vict. c. 63 (General).
1884. 47 & 48 Vict. c. 41 (Disputes).
1891. 54 & 55 Vict. c. 39, s. 89 (Stamp Duties).
1891. 54 & 55 Vict. c. 43, ss. 1, 3 (Forged Transfers).
1892. 55 & 56 Vict. c. 36 (ditto).
1894. 57 & 58 Vict. c. 47 (General).
1896. 59 & 60 Vict. c. 25, ss. 2, 4 (Registrars).

1. Name to Sue and be Sued in.—As has been already stated (*a*), building societies when registered under the Building Societies Act, 1874, become corporations, and must therefore sue and be sued in their corporate name, and the rules relating to corporations generally apply, save in so far as anything to the contrary is contained in the Building Societies Acts. The way in which the society becomes a corporation, and the effect of so becoming, have already been stated (*b*).

The society must be described as of its registered address.

By sect. 2 of the Act of 1877, the society may change its chief office. Notice must be given to

(*a*) *Supra*, p. 58. (*b*) *Supra*, pp. 58, 59.

the registrar, who will register the new address and issue a certificate of such registration.

2. Service of Proceedings.—No provision is made for service of proceedings in the Building Societies Acts, and therefore it must be effected under Ord. IX. r. 8 (*c*), namely, on the clerk, treasurer, or secretary of the society.

In the case of an unregistered society, it seems that the society ought not to be sued, but that the members of the governing body should be made defendants, and should therefore be served personally (*d*).

3. Change of Name.—By sect. 22 of the Act of 1874, a society under the Act may change its name, but such change shall not affect any right or obligation of the society, or of any member thereof, or other person concerned.

4. Union of Societies.—By sect. 33 of the Act of 1874, and by sect. 5 of the Act of 1877, a society may unite with, or transfer its engagements to, another society; but such union or transfer are not to affect the rights of any creditor of either or any society uniting or transferring its engagements.

(*c*) See *supra*, pp. 67, 68.

(*d*) See A. P. 1902, p. 57.

5. Disputes.—By sects. 34 and 35 of the principal Act (*e*), provision is made for the determination of disputes by arbitration, or by the registrar, or by the County Court of the district in which the chief office of the society is situate. "Disputes" in these sections is defined by sect. 2 of the Act of 1884 as referring only to disputes between the society and a member, or representatives of a member in his capacity of a member, unless, by the rules for the time being, it shall be otherwise expressly provided. In the absence of any such express provision, the word "disputes" shall not apply to any dispute between the society and any member thereof, or other person whatever, as to the construction or effect of any mortgage deed or any contract contained in any document other than the rules of the society, and shall not prevent any society (*f*), or any member thereof, or any person claiming through or under him from obtaining in the ordinary course of law any remedy in respect of any such mortgage or other contract to which he or the society would otherwise be by law entitled (*g*).

(*e*) 1874, 37 & 38 Vict. c. 42.

(*f*) *Western Suburban and Notting Hill Provident Building Society* v. *Martin* (1886), 17 Q. B. D. 66, 609; 55 L. J. Q. B. 382; 54 L. T. 822—C. A.

(*g*) This does not include an action brought to settle internal disputes between members or office-holders of a society. It is contrary to the language of the statute and against the policy of the law that such disputes should be the subject of an action at law or equity:

6. Special Case.—By sect. 36 of the principal Act, the arbitrators, or the registrar, or the judge of the County Court, as the case may be, may, at the request of either party, state a case for the opinion of the High Court on any question of law.

By sect. 20 of the Act of 1894, such arbitrators &c. shall not be compelled to state such special case, but may do so at the request of either party.

7. Limitation of Liability of Members.—By sect. 14 of the principal Act, the liability of any member of any society registered under the Act in respect of any share upon which no advance has been made, is limited to the amount actually paid or in arrear on such share, and in respect of any share upon which an advance has been made, is limited to the amount payable thereon under any mortgage or other security, or under the rules of the society (*h*).

The High Court has no jurisdiction to entertain an action against the society by an unadvanced member for the amount of his shares (*i*).

The society is entitled to a foreclosure of mortgages to members made in respect of their shares,

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Thomson v. *Planet Benefit Building Society* (1873), L. R. 15 Eq. 333; 42 L. J. Ch. 364; 28 L. T. 549.

(*h*) See *Brownlie* v. *Russell* (1883), 8 App. Cas. 235; 48 L. T. 881.

(*i*) *Norton* v. *Counties Conservative Building Society*, (1895) 1 Q. B. 246; 64 L. J. Q. B. 214; 71 L. T. 790.

although the deeds and rules contain only powers of sale in case of default in payment of subscriptions (*k*).

8. Winding-up of Society.—By the Act of 1894, s. 8, building societies are to be subject to the Companies (Winding-up) Act, 1890.

If the amount standing to the credit of the holders of unadvanced shares exceeds 10,000*l.*, the petition must be presented to the High (or Palatine) Court; if not, and the chief office is situate within the jurisdiction of a County Court having jurisdiction under the Winding-up Act, 1890, the petition must be presented to the County Court (*l*).

(*k*) *Ingoldby* v. *Riley* (1873), 28 L. T. 55, which also see for form of such judgment; and see also *Provident Building Society* v. *Greenhill* (1878), 9 Ch. D. 122; 38 L. T. 140.

(*l*) Companies (Winding-Up) Act, 1890, s. 1, sub-ss. 1, 2, 3, 5 and 6; *In re Real Estates Co.*, (1893) 1 Ch. 398; 62 L. J. Ch. 213; 68 L. T. 24.

CHAPTER VI.

INDUSTRIAL AND PROVIDENT SOCIETIES.

Acts of Parliament.

1891. 54 & 55 Vict. c. 43 (Forged Transfers).
1892. 55 & 56 Vict. c. 36 (Forged Transfers).
1893. 56 & 57 Vict. c. 39 (General).
1894. 57 & 58 Vict. c. 8 (Amendment, Channel Islands).
1895. 58 & 59 Vict. c. 30 (Amendment).
1898. 61 & 62 Vict. c. 53 (Libraries Offences).

1. What Societies may be Registered.—The Act of 1893, s. 3, enacts that every incorporated society existing at the time of the passing of the Act (12th September, 1893), which has been registered or certified under any Act relating to industrial and provident societies, shall be deemed to be a society registered under the Act of 1893.

Sect. 4 describes the societies which may be registered under the Act as societies for carrying on any industries, businesses, or trades specified in or authorized by their rules, whether wholesale or retail, and including dealings with land, but no member other than a registered society is to have any interest in the shares of the society exceeding two hundred pounds, and special provisions apply in regard to the business of banking.

2. Name to Sue and be Sued in.—The society must sue and be sued in its registered name. By sect. 5, sub-sect. 5, of the Act of 1893, the word "limited" is to be the last word in the name of every society registered under the Act.

3. Effect of Registration.—Sect. 21 enacts that the registration of a society shall render it a body corporate by the name described in the acknowledgment of registry, by which it may sue and be sued, with perpetual succession and a common seal, and with limited liability; and shall vest in the society all property for the time being vested in any person in trust for the society; and all legal proceedings pending by or against the trustee of any such society may be prosecuted by or against the society in its registered name without abatement.

4. Change of Name.—By sect. 52 the society has power to change its name; but no such change is to affect any right or obligation of the society, or of any member thereof, and any pending legal proceedings may be continued by or against the society notwithstanding its new name.

5. Disputes.—Sect. 49 provides that disputes between a member of a registered society or any person aggrieved, who has not for more than six months

ceased to be a member of a registered society, or any person claiming through such member or person aggrieved, or claiming under the rules of a registered society, and the society or an officer thereof, shall be decided in the manner directed by the rules of the society, and that the decision may be enforced by application to the County Court.

If the rules of the society do not expressly forbid it the parties to a dispute may, by consent, refer the dispute to the chief registrar. The Court or the registrar to whom a dispute is referred cannot be compelled to state a special case for the opinion of the High Court on any question of law arising in the case, but may do so at the request of either party.

6. Winding-up.—By sect. 58 (a), the provisions of the Companies Acts, 1862 to 1890, as to the winding-up of companies apply to societies registered under the Act.

By sect. 59, any proceedings in the winding-up of a registered society which, at the passing of this Act are pending in any County Court, may, on application made by or on behalf of the registrar, with the consent of the Treasury, be transferred to the High Court, and thereupon the Companies (Winding-Up) Act, 1890, shall, so far as applicable, apply thereto accordingly.

It has been decided that the enactments from time to time in force for the winding-up of companies in the Chancery Division of the High Court, apply to the case of the winding-up of a registered industrial society which was pending in a County Court at the time of the passing of the Act of 1893, and which has not been transferred to the High Court under the provisions of this section of that Act (*a*).

7. Liability of Members to Execution.—The members of a registered society are not liable to have executions issued against them in respect of judgments obtained against the society, but can only be reached individually by the process of winding-up.

8. Service of Proceedings.—There being no special provision made for service of proceedings by any of the Acts relating to these societies, a writ must be served in accordance with Ord. IX. r. 8 (*b*).

(*a*) *In re Ferndale Industrial Co-operative Society (Limited)*, (1894) 1 Q. B. 828 ; 70 L. T. 448.

(*b*) See p. 67.

CHAPTER VII.

COMPANIES FORMED BY LETTERS PATENT UNDER 7 WILL. IV. & 1 VICT. C. 73 (*a*).

1. Name to Sue and be Sued in.—By sect. 3, actions by and against such companies may be commenced and prosecuted in the name of one of the two officers (*b*) for the time being appointed to sue and be sued on behalf of the company, and registered as such, and if there be no such officer for the time being then actions may be brought against any member of the company.

By sect. 22, proceedings either by or against the company commenced in the name of such officer shall not be abated by his death, or resignation, or removal, or by any change in the membership of the company, but are to be continued in his name notwithstanding such death, &c.

By sect. 25, the bankruptcy of the officer of the company is not to affect the company or the liabilities of its members.

(*a*) See *supra*, p. 60.

(*b*) The officer has no powers beyond those expressly conferred upon him. It is, perhaps, not necessary to describe a public officer as such in the title of the action, though it is usual to do so. He must be so described in the indorsement.

2. Service of Proceedings.—By sect. 26, service of any summons, demand or notice, or any writ or other proceeding at law or in equity, may be effected by serving the clerk of the company or body, or by leaving it at the head office of the company or body, or in cases where the clerk is unknown or cannot be found, then on any agent or officer employed by the company or body, either at the office of the company or at the usual place of abode of such agent or officer.

3. Enforcing Judgment against Company.—Sect. 24 enacts that the judgment against an officer or member is to have the same effect against the property and effects of the company and against the members of the company as if the action had been brought against the company, and execution may issue accordingly. But where the liability of the individual members has been limited by the letters patent under sect. 4 no execution can issue against any member for a greater sum than the residue, if any, of the amount for which such individual shall be liable in respect of the shares held by him, after deducting the amount, if any, which shall have been paid by him or any previous holder of the shares.

This appears to empower a creditor who has obtained judgment against the public officer of the

company to execute that judgment against all or any of the shareholders, or late shareholders, whom he might have sued for payment at common law, the only exceptions being (1) that a shareholder who transfers his share continues a shareholder for all purposes of liability until the transfer has been registered, and (2) that the extent of a shareholder's liability is limited or unlimited according to the letters patent granted to the company (*c*).

Although the judgment is against the public officer, execution should not be issued against him without leave being obtained under Ord. XLII. r. 23 (*d*). This, of course, applies also to execution against the shareholders.

(*c*) Lindley on Companies, p. 289; and see *Philipson* v. *Egremont* (1845), 6 Q. B. 587; 14 L. J. Q. B. 25.

(*d*) Lindley, p. 289; and see *supra*, p. 93.

CHAPTER VIII.

FRIENDLY SOCIETIES.

ACTS OF PARLIAMENT.

1896. 59 & 60 Vict. c. 25 (Consolidating Act).
1897. 60 & 61 Vict. c. 37, s. 3 (Workmen's Compensation).
1898. 61 & 62 Vict. c. 15 (Borrowing Powers).
1898. 61 & 62 Vict. c. 53 (Library Offences).

1. Name to Sue and be Sued.—By sect. 94 (1) of the Act of 1896 the trustees of a registered society or branch, or any other officers authorized by the rules thereof, may bring or defend, or cause to be brought or defended, any action or other legal proceeding in any Court whatsoever touching or concerning any property, right (*a*) or claim of the society or branch, and may sue and be sued in their proper names without other description than the title of their office.

(2) In legal proceedings brought under this Act by a member or person claiming through a member, a registered society or branch may also be sued in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society or branch within the juris-

(*a*) Cp. *Roberts* v. *Page* (1876), 1 Q. B. D. 476; 45 L. J. Q. B. 601; 38 L. T. 325.

diction of the Court in which the legal proceeding is brought, with the addition of the words "on behalf of the society or branch" (naming the same).

(3) A legal proceeding shall not abate or be discontinued by the death, resignation or removal from office of any officer, or by any act of such officer after the commencement of the proceedings.

2. Change in Name of Society.—By sect. 69 (2), any change in the name of a registered society shall not affect any right or obligation of the society, or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the society, or any other officer who may sue or be sued on its behalf, notwithstanding its new name.

3. Service of Proceedings.—By sect. 94 (4), the summons, writ, process or other proceeding to be issued to or against the officer or other person sued on behalf of a registered society or branch shall be sufficiently served by personally serving that officer or other person, or by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch, within the jurisdiction of the Court in which the proceeding is brought, or if that office or place of business is closed, by posting the copy on the outer door of that office or place of business.

(5) In all cases where the summons, &c. is not served by means of such personal service, or by leaving a true copy at the registered office of the society or branch as aforesaid, a copy thereof shall be sent in a registered letter addressed to the committee at the registered office of the society or branch, or posted at least six days before any further step is taken on the proceeding.

4. Vesting of Property in Trustees.—Sect. 49 (1) vests all property belonging to a registered society in the trustees for the time being of the society for the use and benefit of the society and the members thereof.

Sect. 49 (2) vests the property of a registered branch of a society wholly or partly in the trustees for the time being of that branch, or of any other branch of which that branch forms part, or (if the rules of the society so provide) in the trustees for the time being of the society.

Sect. 50 makes provision for the death, resignation or removal of a trustee of a registered society or branch. All property is to vest without conveyance or assignment, as personal property, in the succeeding trustees either solely or together with any surviving or continuing trustees, and until the appointment of succeeding trustees shall so vest in the surviving or continuing trustees only, or in the

executors or administrators of the last surviving or continuing trustees, except with regard to stocks and securities in the public funds which require transference.

5. Description in Legal Proceedings.—By sect. 51, in all legal proceedings whatsoever concerning any property vested in the trustees of a registered society or branch, the property may be stated to be the property of the trustees in their proper names as trustees for the society or branch without further description.

6. Execution, Priority on Death, &c. of Officer.—By sect. 35, in the following cases, namely,—

(a) upon the death or bankruptcy (*b*) of any officer of a registered society or branch having in his possession by virtue of his office any money or property belonging to the society or branch; or

(b) if any execution, attachment or other process is issued, or action or diligence raised, against any such officer or against his property;

his heirs, executors, or administrators, or trustee in bankruptcy, or the sheriff or other person executing the process, or the party using the action or dili-

(*b*) This includes liquidation of a debtor's affairs by arrangement: sect. 35 (2).

gence respectively shall, upon demand in writing of the trustees of the society or branch, or of any two of them, or of any person authorized by the society or branch, or by the committee thereof, to make the demand, pay the money and deliver over the property to the trustees of the society or branch in preference to any other debt or claim against the estate of the officer. But the authorized receipt of money by an officer of the society is not money in his possession by virtue of his office, and therefore the society has no claim for preferential payment in case of death or bankruptcy in such cases (*c*).

7. Definitions.—By sect. 106, "branch" means any number of the members of a society under the control of a central body, having a separate fund administered by themselves or by a committee of officers appointed by themselves, and bound to contribute to a fund under the control of a central body.

"Committee" means the committee of management or other directing body of a society or branch.

"Officer" includes any trustee, treasurer, secretary, or member of the committee of management of a society or branch, or person appointed by the society or branch to sue and be sued on its behalf.

(*c*) *Re Aberdein's Estate*, *Hagon* v. *Aberdein*, Diprose, Cases affecting Friendly Societies, p. 88.

8. Disputes.—Disputes are to be determined in the manner provided for by the rules of the society or branch, or (unless they expressly forbid it) by reference by consent to the registrar, or where no provision is made as to disputes in the rules, or where no decision is made on a dispute within forty days after application to the society or branch for a reference under its rules, by a County Court or Court of summary jurisdiction on application by the aggrieved member or person (*d*).

Where the dispute has been properly referred to arbitration the High Court has no power to interfere with the award (*e*).

The dispute must be one which comes between the trustees and the party claiming as a member of the society to bring it within the arbitration rules of the society (*f*).

But the provisions of sect. 68 for the reference of disputes to the County Court are permissive only, and not peremptory; and, therefore, there is, in a proper case, jurisdiction to remove to the High

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(*d*) See *Palliser* v. *Wall*, (1897) 1 Q. B. 207; *Norton* v. *Counties Conservative Building Society*, (1895) 1 Q. B. 246; 64 L. J. Q. B. 214; 71 L. T. 790.

(*e*) *Re Gollings and Tradesmen's Friendly Society* (1891), 64 L. T. 775.

(*f*) *Prentice* v. *London and Others* (1875), L. R. 10 C. P. 679; 44 L. J. C. P. 353; 33 L. T. 351; and *Willis* v. *New Union Society*, 8 Times L. R. 653.

Court by *certiorari* proceedings in an action commenced against a friendly society by one of its members (*g*).

Where the matter in dispute is not one between the society and a person in his capacity as member, as, for instance, where the relation of mortgagor and mortgagee exists between them, the ordinary legal remedies are applicable (*h*).

9. Special Case.—By sect. 68 (7), provision is made for statement of special case by the Court or registrar, or arbitrator, to whom a dispute is referred. Such statement cannot be compelled, but the case may be stated at the request of either party.

Subscription of Members.—By sect. 23, the subscriptions of a person being or having been a member of a registered society or branch shall not be recoverable at law.

This does not apply to cattle insurance societies, for sect. 31 (2) enacts that all moneys payable by a member to such a society are deemed to be a debt due from such member to the society, and are recoverable as such in the County Court of the district in which such member resides.

(*g*) *In re Royal Liver Friendly Society* (1887), L. R. 35 Ch. D. 332; 56 L. J. Ch. 821; 56 L. T. 817.

(*h*) *Queen* v. *Trafford and Another*, 4 El. & B. 122.

CHAPTER IX.

TRADE UNIONS.

Acts of Parliament.

1871. 34 & 35 Vict. c. 31. 1876. 39 & 40 Vict. c. 22.
1883. 46 & 47 Vict. c. 47.

1. Name to Sue and be Sued in.—By sect. 9 of the Act of 1871 the trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorized so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint, in any Court of law or equity, touching or concerning the property (*a*), right, or claim to property of the trade union, and shall and may in all cases concerning the real and personal property of such trade union sue and be sued, plead and be impleaded, in any Court of law or equity in their proper names, without any other description than the title of their office; and no such action, &c. shall be discontinued or shall abate by the death or removal from office of such person or any of

(*a*) Property does not mean specific property only: see *Linaker* v. *Pilcher and Others*, 17 T. L. R. 256.

them; but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place; and such successors shall pay and receive the like costs as if the action had been commenced in their names for the benefit of, or to be reimbursed from, the funds of such trade union.

The trustees or officer must be described in the title of the action and in the body of the writ by their or his proper names, with the addition of their or his title. The claim must be stated in the indorsement to be made against them as trustees (or as ——) of the trade union.

In the statement of claim the trustees may be described as the trustees of the —— Trade Union, which is duly registered under the provisions of the Trade Union Act, 1871. The officer may be described thus: —— the plaintiff (or defendant) is the (title of office) of the —— Trade Union, which is duly registered (as above), and he is authorized by the rules of the said society to sue (or be sued) in this action on behalf thereof.

A trade union registered (*b*) under the Trade Union Acts may also be sued in its registered name, at any rate in actions of tort (*c*). It may,

(*b*) As to an unregistered society, see *Charnock* v. *Court*, (1899) 2 Ch. 35; 68 L. J. Ch. 550; 80 L. T. 564.

(*c*) *Taff Vale Co.* v. *Amalgamated Society of Railway Servants*, (1901) A. C. 426; 70 L. J. K. B. 219; 83 L. T. 474.

perhaps, sue and be sued in its registered name in any action.

Lord Justice Lindley, in the above-mentioned action, says: "I cannot perceive why an action in the name of the trade union against its trustees to restrain a breach of trust, or to make them account for a breach of trust already committed, should be held unmaintainable or wrong in point of form." And again: "The Act appears to me to indicate with sufficient clearness that the registered name is one which may be used to denote the union as an unincorporated society in legal proceedings as well as for business and other purposes. I do not say that the use of the name is compulsory, but it is at least permissive."

It may also be sued in another way. Lindley, L.J., in the same case, says: "I have no doubt whatever that if the trade union could not be sued in this case in its registered name, some of its members—namely, its executive committee—could be sued on behalf of themselves and other members of the society, and an injunction and judgment for damages could be obtained in a proper case in an action so framed."

2. Change of Name.—By sect. 11 of the Act of 1876, no change of name shall affect any right or obligation of the trade union, or of any member thereof,

and any pending legal proceedings may be continued by and against the trustees of the trade union, or any other officer, who may sue and be sued on behalf of the trade union notwithstanding its new name.

3. Amalgamation of Societies.—By sect. 12 of the same Act, no amalgamation of a trade union with another or others shall prejudice any right of a creditor of either or any union party thereto.

4. Withdrawal or Cancellation of Certificate.—By sect. 8 of the same Act, the withdrawal or cancellation of the certificate of any trade union is not to prejudice any liability incurred by such trade union, which may be enforced against the same as if such withdrawal or cancellation had not taken place.

5. What Actions may not be brought.—By sect. 4 of the Act of 1871, nothing in this Act shall enable any Court to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements:—

(1) Any agreement between members of a trade union as such concerning the conditions on which any members for the time being of such trade union shall or shall not sell

their goods, transact business, employ or be employed (*d*).

(2) Any agreement for the payment by any person of any subscription or penalty (*e*) to a trade union.

(3) Any agreement(*f*) for the application of the funds of a trade union—

(a) to provide benefits to members (*g*); or

(b) to furnish contributions to any employer or workman, not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union; or

(c) to discharge any fine imposed upon any person by sentence of a Court of Justice; or

(4) Any agreement made between one trade union and another; or

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(*d*) See *Chamberlain Wharf (Limited)* v. *Smith*, (1900) 2 Ch. 605; 83 L. T. 238; 69 L. J. Ch. 783.

(*e*) See *Urmston* v. *Whitelegg* (1890), 63 L. T. 455.

(*f*) This includes the rules of the union to which members have subscribed, called "the agreement of association": *Strick* v. *Swansea Tin Plate Co.* (1887), 36 Ch. D. 558; 57 L. J. Ch. 438; 57 L. T. 392.

(*g*) See *Crocker* v. *Knight*, (1892) 1 Q. B. 702—C. A.; 61 L. J. Q. B. 466; 66 L. T. 596; *Duke* v. *Littleboy*, 49 L. J. Ch. 802; 43 L. T. 216; 28 W. R. 977; but see also Cohen & Howell on Trade Union Law, at p. 59.

(5) Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

6. Vesting of Property in Trustees.—By sect. 8 of the Act of 1871, as amended by sect. 3 of Act of 1876, all property whatsoever belonging to any trade union registered under this Act is to be vested in the trustees, and the property of any branch of a trade union in the trustees of the branch, or the trustees of the trade union if the rules of the trade union so provide; and similar provisions are made as in the case of friendly societies for the vesting of such property in other trustees on any change taking place by death or removal.

7. Description in Legal Proceedings.—By the same section, in any action or suit or indictment touching or concerning any such property, it shall be stated to be the property of the person or persons for the time being holding the office of trustee in their proper names as trustees of such trade union, without further description.

8. Service of Proceedings.—By sect. 9 of the Act of 1871, service of any summons may be effected by

leaving it at the registered office of the trade union.

9. Enforcing Judgment against a Trade Union.—A judgment or order against a trade union in its registered name for the payment of money can only be enforced against the property of the trade union, and to reach such property it may be necessary to sue the trustees (*h*).

(*h*) Lindley, L.J., in *Taff Vale Rail. Co.* v. *Amalgamated Society of Railway Servants*, (1901) A. C. at p. 445.

CHAPTER X.

LITERARY AND SCIENTIFIC INSTITUTIONS.

ACTS OF PARLIAMENT.

1854. 17 & 18 Vict. c. 112. | 1891. 54 & 55 Vict. c. 61.

1. Name to Sue and be Sued in.—By sect. 21 of the Act of 1854, any institution incorporated which shall not be entitled to sue and be sued by any corporate name, and every institution not incorporated, may sue and be sued in the name of the president, chairman, principal secretary or clerk as shall be determined by the rules and regulations of the institution, and in default of such determination in the name of such person as shall be appointed by the governing body for the occasion; provided that it shall be competent for any person having a claim or demand against the institution to sue the president or chairman thereof if, on application to the governing body, some other person or officer be not nominated to be the defendant.

By sect. 22, no suit or proceeding in any civil Court shall abate or discontinue by reason of the person by or against whom such proceeding shall have been brought dying or ceasing to fill the

character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

2. Vesting of Property.—By sect. 20, where any institution shall be incorporated and have no provision applicable to the personal property of such institution, and in all cases where the institution shall not be incorporated, the money, securities, goods, chattels and personal effects belonging to the institution and not vested in trustees shall be deemed to be vested for the time being in the governing body of such institution, and in all proceedings, civil and criminal, may be described as the moneys, &c. of the governing body of such institution by their proper title.

3. Governing Body.—By sect. 32, the governing body shall be the council, directors, committee, or other body to whom by Act of Parliament, charter, or the rules and regulations of the institution, the management of its affairs is entrusted.

4. Action between Institution and Member.—By sect. 25, a member who is in arrear of his subscription according to the rules of the institution, or may be or shall possess himself of or detain any property

of the institution in a manner or for a time contrary to such rules, or shall injure or destroy the property of the institution, may be sued in the manner described in sects. 21, 22; but if the defendant shall be successful in any action or other proceeding at the instance of the institution and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the institution, and, in the latter case, shall have process against the institution in the manner described in sect. 23.

5. Judgment against Public Officer.—By sect. 23, if a judgment shall be recovered against the person or officer named on behalf of the institution, such judgment shall not be put in force against the goods, chattels, or lands, or against the body of such person or officer, but against the property of the institution.

Distribution of Property on Dissolution.—By sect. 30 of the Act of 1854, if upon the dissolution of any institution there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the institution or any of them, but shall be given to some other institution,

to be determined by the members at the time of dissolution, or in default thereof by the judge of the County Court.

Provided, however, that this clause shall not apply to any institution which shall have been founded or established by the contributions of shareholders in the nature of a joint stock company.

A literary and scientific institution in the property of which the proprietors were interested in proportion to the number of their shares, which shares were transferable and transmissible, is in the nature of a joint stock company within the meaning of the above proviso (*a*).

6. Service of Proceedings.—Where the institution is made a corporation by the Act constituting it, service must be effected under Ord. IX. r. 8A (*b*), unless special provision is made otherwise in the Act. Where the institution is not incorporated, service must probably be effected on the person sued under sect. 21 (*c*).

(*a*) *In re Russell Institution*, *Figgins* v. *Baghino*, (1898) 2 Ch. 72; 67 L. J. Ch. 411; 78 L. T. 588; *In re Jones*, *Clegg* v. *Jones*, (1898) 2 Ch. 83; 67 L. J. Ch. 504; 78 L. T. 639.

(*b*) See p. 67.

(*c*) See p. 136.

CHAPTER XI.

LOAN SOCIETIES.

ACTS OF PARLIAMENT.

3 & 4 Vict. c. 110, made perpetual by 26 & 27 Vict. c. 26.

Name to Sue and be Sued in.—The trustee or trustees in whom the property of the society shall be vested are, by sect. 8, authorized to bring or defend, or cause to be brought or defended, any suit, criminal as well as civil, at law or in equity, concerning the property or any claim of such society, and to sue and be sued in his or their proper name or names as trustee or trustees of such society, without further description.

Similar provision to that in the case of trade unions is also made by the same section to prevent the abatement of the action through the death or removal of the trustee or trustees, and also with reference to costs.

2. Vesting of Property.—By sect. 8 also the property of the institution is vested in a trustee or trustees, and provision made for the death or removal of the trustee or trustees similar to that with reference to friendly societies and trade unions.

3. Judgment.—The trustees are not liable in their persons or goods to the consequence of any judgment obtained against them in any suit, but the same avails and may be enforced only against the stock and goods of the society in their hands or within their control.

CHAPTER XII.

COST BOOK MINING COMPANIES, CLUBS AND UNINCORPORATED CHARITABLE INSTITUTIONS.

ACTS OF PARLIAMENT.

1869. 32 & 33 Vict. c. 19. 1887. 50 & 51 Vict. c. 43.
1896. 59 & 60 Vict. c. 45.

A. *Cost Book Mining Companies.*

Name to Sue and be Sued in.—By sect. 13 of the Act of 1869 these companies are empowered to sue for calls by their purser; but there is no statutory enactment enabling them to sue or be sued generally by that officer, and they must, therefore, sue and be sued in their partnership name (*a*).

Unregistered cost book mining companies being partnerships may be proceeded against as in the case of partners in a firm.

Liability of Shareholders.—The liability of shareholders to creditors does not differ from that incurred by members of an ordinary partnership; but by the Stannaries Act, s. 25, a past shareholder is not liable to contribute to the assets of

(*a*) *Escott* v. *Gray* (1877), 47 L. J. C. P. 606; 39 L. T. 121.

the company if he ceased to be a shareholder for two years or upwards before the date of the winding-up order.

Change of Purser.—Where there is a change of purser while legal proceedings are pending, the name of the purser for the time being may, by leave of the Court in which the proceedings are pending, or of a judge or proper officer thereof, be substituted for that of a person ceasing to be purser by reason of death, resignation, or otherwise (*b*).

Statement of Claim in Actions for Calls.—Sect. 13 contains provisions as to the matter to be stated in the statement of claim similar to those contained in the Companies Clauses Consolidation Act, 1845 (*c*).

Charging Orders.—By sect. 23 of the Partnership Act, 1890, the provisions relating to charging orders on a partner's share in the partnership property relate also to these companies.

Ord. XLVI. r. 1A provides that the summons by a creditor for an order charging the debtor's interest in the property and profits of the company under the above section, and for such other orders

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(*b*) Sect. 13 of Act of 1869. (*c*) See *supra*, p. 86.

as are thereby authorized to be made, shall be served on the judgment debtor and the purser of the company, and such service is to be good service on the company, and all orders made on such summons are to be similarly served.

Order XLVI. r. 1B provides that every application which shall be made under the same section (by any other member of the company) shall be served on the judgment creditor, judgment debtor, and the purser of the company, and such service is to be good service on the company, and all orders made on such summons shall be similarly served.

B. *Members' Clubs not Registered as Companies.*

A club, not being a corporate body, partnership, or individual, and not a legal entity, cannot be sued in the club-name (*d*); but the committee of management, or perhaps, in the case of contracts, the particular members of it entering into the contract, should be sued in their individual names, and service effected on them personally.

Sometimes the rules of the club or a special resolution authorize a person or persons to sue and be sued on their behalf. In *Andrews* v. *Salmon* (*e*)

(*d*) See judgment of M.R. in *Taff Vale Rail. Co.* v. *Amalgamated Society of Railway Servants*, (1901) 1 Q. B. 173; and see (1901) A. C. 426.

(*e*) W. N. (1888) 102.

the Court expressly authorized the chairman and a member of the committee to represent the committee.

Where a question arises between members of the club and the executive, a common and convenient course is for one member of the club to bring the action, suing on behalf of himself and all other the members of the club, against the trustees and committee (*f*).

Service on the secretary of a club sued in the club-name has been held bad (*g*).

Where the committee is a large one, an order may be made authorizing some of its members to defend on behalf of the committee.

In a case in which a member of a club sued the chairman of committee and the secretary for an injunction restraining the club from expelling him, an order was made authorizing the two defendants to represent the committee (which consisted of thirty persons), and to defend the action on behalf of all the members thereof, though the defendants objected (*h*).

An action may be brought by a member of a club on behalf of himself and all other members of

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(*f*) *Harrison* v. *Marquis of Abergavenny* (1886), 3 Times L. R. 324.

(*g*) *Grossman* v. *The Granville Club*, 28 Sol. Jo. 513.

(*h*) *Andrews* v. *Salmon*, W. N. (1888) 102; and see *Bray* v. *Gandon*, 85 L. T. J. 212.

the club except the defendants against the trustee and committee (*i*).

It seems that if an action be brought against a club in its club-name, an appearance would be received in the Appearance Department of the Central Office for the members of the committee describing themselves as such. The appearance could not be entered in the club-name.

Proprietary clubs are not distinguishable from firms, and the same rules would apply to such clubs as relate to proceedings by and against firms and a person trading under a firm-name.

C. *Unincorporated Charitable Institutions* (*k*).

If there is no person appointed by the rules of the institution to sue and be sued on its behalf, it seems that in Chancery proceedings with reference to legacies, &c., it may be joined as defendant in the name by which it is known.

In cases of contract or tort it is perhaps correct to sue the individual person entering into the contract on behalf of the institution or inflicting the injury; but perhaps objection could not be taken if the members of the governing body or the person

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(*i*) *Harrison* v. *Abergavenny*, 3 Times Rep. 325.

(*k*) See *In re Lacey*, (1899) 2 Ch. 149; 80 L. T. 706; 68 L. J. Ch. 488.

or persons in whom the property of the institution is vested were sued.

Where the institution is sued in its name an appearance will be received for the institution by its secretary or treasurer by name, and adding their description.

Service of proceedings where the institution is sued would probably be effected by serving the treasurer or secretary, or a member of the governing body, at the institution, or its administrative centre where it has branches.

CHAPTER XIII.

FOREIGN CORPORATIONS.

1. Definitions.—A foreign corporation is a corporation duly created by the law of a foreign state recognized by His Majesty's Government (*a*), and whose domicil is foreign, *i.e.* not English.

The domicil of a corporation is the place considered by law to be the centre of its affairs (*b*), which—

(1) in the case of a trading corporation is its principal place of business, *i.e.* the place where the administrative business of the corporation is carried on;

(2) in the case of any other corporation is the place where its functions are discharged.

The domicil of a trading company, it is hardly necessary to say, is quite distinct from that of the

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(*a*) A corporation created by a government not recognized by His Majesty cannot be recognized as a corporation by the Courts of this country: *City of Berne* v. *Bank of England*, 9 Ves. Jun. 347; and see *Carron Co.* v. *Maclaren* (1854), 5 H. L. Cas. 416. A colonial government is not a corporation, and cannot be effectually served with a writ of summons: *Sloman* v. *New Zealand Government* (1877), 46 L. J. Q. B. 185; 35 L. T. 454.

(*b*) See Dicey, Conflict of Laws, p. 154.

persons composing it. It is, as stated above, the place where its administrative business is carried on. This is not necessarily the place where the company's manufacturing or other business operations are carried on, nor is it necessarily the registered office of the company. But a company registered under the Companies Act, 1862, is, for all purposes of that Act, resident in that part of the United Kingdom in which its registered office is situate, and therefore a company whose registered office is in Scotland or Ireland is domiciled and ordinarily resident there within the meaning of Ord. XI. r. 1 (c) and (e) (*c*). A company formed in this country for the purpose of carrying on business abroad, but having its principal place of business here, is not a foreign corporation, and is therefore subject to the jurisdiction of the English Courts as any other English corporation (*d*). A foreign company cannot be registered as an existing company under the Companies Acts.

2. Power to Sue and Liability to be Sued in England.—It is an established rule of so-called private inter-

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(*c*) *Jones* v. *Scottish Accident Insurance Co.* (*Limited*) (1886), 17 Q. B. D. 421; 55 L. J. Q. B. 415; *Watkins* v. *Scottish Imperial Insurance Co.* (1889), 23 Q. B. D. 285; 58 L. J. Q. B. 495; 60 L. T. 639.

(*d*) *Buenos Ayres, &c. Rail. Co.* v. *Northern Rail. Co. of Buenos Ayres* (1877), 2 Q. B. D. 210.

national law that a corporation or company, duly created under the law of one state, may sue and be sued in its corporate name in the Courts of other states. Beyond this, conventions have been entered into by this country with Germany, France, Belgium, Italy, Spain, Greece and other countries, mutually securing to commercial and industrial companies the exercise of their rights and the right of appearing before the tribunals. But apart from these conventions, the right of foreign and colonial corporations to carry on business in England, without any authority from Act of Parliament or the Government, has now passed unquestioned for so long that it may be considered to be established (*e*).

A foreign corporation may sue and be sued in England in its corporate name or in the name it has acquired by reputation. If the name be not directly consistent with the name specified in the charter or other instrument creating it, proof that it is the same company is a sufficient answer to any objection taken (*f*). But a company empowered by a foreign government to sue and be

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(*e*) Westlake, Private International Law, p. 337. A foreign corporation was admitted in England as plaintiff in 1734, and as defendant in 1858.

(*f*) *Bank of St. Charles* v. *De Bernales* (1823), 1 R. & M. 193; 1 Car. & P. 569.

sued by a public officer cannot so sue and be sued here (*g*). It can sue and be sued on all contracts entered into with it in this country, provided such contracts are warranted by the constitution of the corporation and are not illegal by English law (*h*).

Although it may have its principal place of business abroad and be domiciled there, it may be sued here if it is in fact amenable to the process of our Courts (*i*). There is no difference in this respect between a foreign corporation and a foreign individual, except that the latter may be amenable both in his person and property, while the former can, properly speaking, be amenable only through its property and its agents. The transactions of a corporation are governed by the law of the place where those transactions occur, and by the constitution of the corporation. Jurisdiction over foreign corporations is conferred by the fact of residence here, and residence is constituted by the carrying on of business in this country by means of a branch office (*j*). But this does not apply to a Scotch or Irish corporation. It is sufficient if part only of the business of the corporation is carried on in this

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(*g*) *Bullock* v. *Caird* (1873), L. R. 8 Q. B. 278.

(*h*) Lindley on Companies, p. 910.

(*i*) *I.e.* under Ord. XI. r. 1.

(*j*) *Haggin* v. *Comptoir d'Escompte de Paris* (1889), 23 Q. B. D. 519; 58 L. J. Q. B. 508; 61 L. T. 748; approving *Newby* v. *Van Oppen* (1872), L. R. 7 Q. B. 293; 41 L. J. Q. B. 148; 26 L. T. 164.

country, if it be the main part, and an action can be maintained even if it is in respect of a part of the business which is not carried on at the branch office (*k*).

3. Security for Costs.—A foreign corporation suing as plaintiff here may be compelled to give security for costs even if it has personal property within the jurisdiction, and some of its shareholders reside in England and are responsible to the extent of the unpaid amount on their shares (*l*).

4. Service of Writ, &c.—

A. *Within the Jurisdiction.*

Ord. IX. r. 8 (*m*) of the Rules of the Supreme Court applies to a foreign corporation (not Scotch or Irish) provided it really carries on a material part of its business at a place of business within the jurisdiction, and has an officer there, in the nature of a head officer, whose knowledge would be that of the corporation (*n*).

(*k*) *Haggin* v. *Comptoir d'Escompte de Paris*, *supra*.

(*l*) *The Kilkenny and Great Southern and Western Rail. Co.* v. *Fielden* (1851), 6 Ex. 81 ; 20 L. J. Ex. 141 ; but see *In re Apollinaris Co.'s Trade Marks*, (1891) 1 Ch. 1.

(*m*) See *supra*, p. 67.

(*n*) *Haggin* v. *Comptoir d'Escompte de Paris*, *supra* ; *Newby* v. *Van Oppen*, *supra*.

But a Scotch or Irish corporation cannot be served within the jurisdiction, even though it carries on business within the jurisdiction (*o*).

Carrying on Business.—In a case where a foreign bank had what was called an "agency" in London, the agency being ostensibly and in fact a bank with the usual offices, manager and staff of clerks, it was held that service on the head manager of the "agency" was good service on the foreign bank (*p*).

But where a foreign corporation (though with the majority of its shareholders resident in England) had a London agency conducted in the agent's own office, but carried on no principal or material part of its business in this country, it was held that it could not be sued here (except under Ord. XI. if that order applied), and that service effected under Ord. IX. r. 8 on the agent in London was bad (*q*).

Ord. IX. r. 8, does not apply to service of writ

(*o*) *Watkins* v. *Scottish Imperial Insurance Co.* (1889), 23 Q. B. D. 285; 58 L. J. Q. B. 495; 60 L. T. 639; *Wood* v. *Anderston Foundry Co.* (1888), 36 W. R. 918; *Palmer* v. *Gould & Co.*, W. N. (1884) p. 63.

(*p*) *Lhoneux* v. *Hong Kong and Shanghai Banking Corporation* (1886), 33 Ch. D. 446; 55 L. J. Ch. 758; 54 L. T. 863.

(*q*) *Badcock* v. *Cumberland Gap Park Co.*, (1893) 1 Ch. 362; 62 L. J. Ch. 247; 68 L. T. 155.

on a Scotch railway company having a portion of its line in England (*r*).

Head Officer, &c.—The test as to whether the person served comes under this description appears to be the question whether his knowledge can be said to be the knowledge of the corporation.

In a case where a foreign company had agents and correspondents in London, and service of the writ in an action against the company was effected on an agent in London, it was held that the service was bad on the ground that it was not service on the head officer, clerk, treasurer or secretary of such corporation within Ord. IX. r. 8 (*s*).

In another case, the defendants were a religious order established in France, having four branch convents in England. The writ of summons was served on the mother superior of one of the branch convents in England. It was held that, assuming the defendants to be a foreign corporation carrying on business in England, the service of the writ must be set aside, there being no evidence to show that the person on whom the service was effected had control over all the branch convents in Eng-

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(*r*) *Palmer* v. *Caledonian Rail. Co.*, (1892) 1 Q. B. 823; 61 L. J. Q. B. 552; 66 L. T. 771.

(*s*) *Nutter* v. *Messageries Maritimes de France* (1885), 54 L. J. Q. B. 527.

land, so as to be the defendants' head officer within Ord. IX. r. 8. (*t*).

In a recent case, a foreign shipping company had an agent in this country who occupied offices of which the rent and other expenses, including income tax, legal charges, postage and telegrams, were paid by the company. The agent conducted the business of arranging for the carriage of passengers and goods by the company's vessels, but also carried on other business in addition to that of the company. It was held that the company was resident within the jurisdiction so as to allow it to be served within the jurisdiction under Ord. IX. r. 8, and that the agent was a head officer or clerk of the company within the meaning of that order (*u*).

The person served must be the head officer, &c. of the corporation, and not the clerk of its agents (*x*).

A foreign corporation can agree to a particular mode of service within the jurisdiction, or can contract to have a domicil within the jurisdiction

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(*t*) *Golding* v. *La Sainte Union des Sacrés Cœurs* (1898), 67 L. T. 605—C. A.

(*u*) *La Bourgogne*, (1899) P. 1; 79 L. T. 331; affirmed, (1899) A. C. 431; 68 L. J. P. 104; 80 L. T. 845.

(*x*) *The Princess Clementine*, (1897) P. 18; 66 L. J. P. 23; 75 L. T. 695.

for the purpose of being sued, and service effected in the manner agreed upon is good. The bankruptcy of the corporation does not revoke the authority of a particular person appointed to receive service (*y*).

In this case, the contract entered into between the plaintiffs and the defendants (a French corporation having no place of business in England) contained a clause that a firm of metal brokers in London should be agents for the French company "on whom any writ or other legal process arising out of the contract might be served." Subsequently the French company was declared to be in judicial liquidation under the direction and supervision of the Tribunal of Commerce of the Seine. It was held that service of a writ in an action arising out of the contract upon a member of the firm named in the contract was good, although not within the Rules of the Supreme Court, and that the judicial liquidation did not revoke the contract.

B. *Service out of the Jurisdiction.*

A foreign corporation is a "person" within the meaning of Ord. XI. r. 1, and, therefore, in a proper case an order for service of the writ or

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(*y*) *Tharsis Sulphur Co.* v. *Société des Métaux* (1889), 60 L. T. 924; 58 L. J. Q. B. 435.

notice of the writ out of the jurisdiction can be made as in the case of a natural person (*z*).

In the case of *The Royal Mail Steam Packet Co.* v. *Braham* (*a*), the facts were as follows:—It is provided by sect. 19 of the Supreme Court Procedure Law (Jamaica), "that in any action against a person residing out of Jamaica, it shall be lawful for the Court or a judge upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, or in respect of a breach of contract made within the jurisdiction, and that such person carries on in Jamaica any trade or business, and that he has no known agent in Jamaica authorized to bring actions . . . . . to order that the service of the writ and all subsequent proceedings may be made on any servant or agent in Jamaica engaged in carrying on for such person such . . . . . trade or business." A company conveying mails and passengers to and from Great Britain and the West Indies was domiciled in London, but had a superintendent in Jamaica. It was held that the company was a person within the meaning of the section, that they carried on business in Jamaica, and that an order

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(*z*) *Scott* v. *Royal Wax Candle Co.* (1876), 1 Q. B. D. 404; 45 L. J. Q. B. 586; 34 L. T. 683; *The W. A. Sholton* (1888), 13 P. D. 8; 57 L. J. P. 4; 58 L. T. 91.

(*a*) (1877), 46 L. J. P. C. 67; 2 App. Cas. 381; 36 L. T. 220.

directing service on their superintendent in Jamaica was correct.

A company registered in Scotland, but carrying on business also in England, cannot be served by sending a copy of the writ through the post directed to the registered office and by personally serving the manager of the branch business in England (*b*).

The Court has no jurisdiction to order service of a summons under the Companies Act, 1862, ss. 100, 165, upon respondents out of the jurisdiction (*c*).

5. Liability of Members.—The liability of the members of a foreign corporation in this country depends upon the constitution of the corporation. If the members are wholly irresponsible, or only to a limited extent responsible, for the debts and engagements of the corporation, by the charter or other instrument creating it, the liability of the members will be the same here as in the country which created it (*d*).

The individual members cannot be sued here for

(*b*) *Wood* v. *Anderston Foundry Co.* (1888), 36 W. R. 918.

(*c*) *Anglo-African Steamship Co.* (1886), 55 L. J. Ch. 579; 32 Ch D. 1348; 54 L. T. 807; and see, as to service of notice of motion to rectify register of trade marks, *La Compagnie Générale, &c.*, (1891) 3 Ch. 451.

(*d*) *Bateman* v. *Service* (1881), 6 App. Cas. 386.

the debts of the company contracted in another country where it carries on business (*e*); but a judgment obtained abroad against a member of a company may be enforced here, and a judgment against an officer appointed to sue and be sued on behalf of a company by a colonial Act, recovered against him in that colony, may be enforced by action in this country against a member of the company resident here (*f*).

6. Winding-up of Foreign Company.—A foreign company carrying on business in England through a branch office may be ordered to be wound up in England, but the winding-up will only be ancillary if the company is also being wound up abroad (*g*).

(*e*) *Bateman* v. *Service* (1881), 6 App. Cas. 386; and Lindley on Companies, p. 910.

(*f*) *Bank of Australasia* v. *Nias* (1851), 16 Q. B. 717; 20 L. J. Q. B. 284.

(*g*) *In re Matheson Bros.* (*Limited*) (1884), 27 Ch. D. 225; 51 L. T. 111; *In re Commercial Bank of S. Australia* (1886), 33 Ch. D. 174; 55 L. J. Ch. 670; 55 L. T. 609.

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